

# **POLICY AND PROCEDURE MANUAL**

**FOR THE FILING OF**



# **KANSAS ADMINISTRATIVE REGULATIONS**

**DEPARTMENT OF ADMINISTRATION  
TOPEKA, KANSAS 66612**

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## **FOREWORD**

This manual has been prepared in order to assist state agencies in the filing of regulations. The content has been a collective effort of the offices of the Secretary of Administration, the Attorney General, and the Secretary of State, as well as staff for the legislative Joint Committee on Administrative Rules and Regulations.

The 2001 revision of the *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* includes references to all amendments to the Rules and Regulations Filing Act through the 2000 Legislative Session.

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## **OVERVIEW**

Regulations implement or interpret legislation administered by an agency. The statutory authority for an agency to adopt regulations is found in enabling legislation.

Statutory requirements for the filing of regulations by most executive branch agencies and for the legislative branch review of regulations are found in the rules and regulations filing act, K.S.A. 77-415 through 77-437.

There are two types of regulations--permanent and temporary. **A permanent regulation will take effect 15 days after publication in the *Kansas Register*.**

A temporary regulation may be authorized if preservation of the public peace, health, safety, or welfare makes it necessary or desirable to put a regulation into effect before a permanent regulation could take effect. See K.S.A. 77-422. **A temporary regulation takes effect and will remain effective for 120 days, beginning on the date it is approved by the state rules and regulations board and filed in the office of the secretary of state.**

Due to the definition of “rule and regulation” in K.S.A. 77-415(4) and other statutes specifically exempting a limited number of agencies from the requirements of the rules and regulations filing act, certain agencies have statutory authority to adopt regulations without complying with all requirements of the rules and regulations filing act. However, unless otherwise specifically exempted by statute, those agencies must still follow the procedures prescribed in K.S.A. 77-421a.

The joint committee on administrative rules and regulations (joint committee) is responsible for legislative oversight of regulations. All existing regulations, both

permanent and temporary, are subject to review at any time by the joint committee. Additionally, the joint committee will review and comment on proposed regulations during the 60-day public comment period. See K.S.A. 77-436(c). Comments made by the joint committee regarding proposed regulations should be considered with the same weight as that given to comments made by other individuals or organizations participating in the public comment and hearing process. See *State ex rel. Stephan v. House of Representatives*, 236 Kan. 45, 64 (1984). After permanent regulations are filed with the office of the secretary of state, or temporary regulations are approved by the rules and regulations board and filed with the secretary of state, the joint committee may again review the regulations. See K.S.A. 77-436 (d).

## **PROCESS FOR ADOPTING PERMANENT REGULATIONS**

The steps involved in adopting any **permanent** Kansas administrative regulation (K.A.R.), **in consecutive order**, are as follows:

- (a) Obtain approval of the proposed regulations from the secretary of administration;
- (b) obtain approval of the proposed regulations from the attorney general;
- (c) submit the notice of hearing, copies of the proposed regulations as approved, and the economic impact statement to the secretary of state, and a copy of the notice of hearing to the chairperson of the joint committee on administrative rules and regulations;
- (d) review the proposed regulations with the joint committee;
- (e) hold the public hearing;
- (f) as needed, revise the regulations and the economic impact statement and again obtain approval of the secretary of administration and attorney general;
- (g) adopt the regulations; and
- (h) file the regulations and associated documents with the secretary of state.

### **APPROVAL BY THE SECRETARY OF ADMINISTRATION AND THE ATTORNEY GENERAL**

(a) Submit the proposed regulations to the secretary of administration for review and approval as to organization, style, spelling, and grammar, subject to the organization, style, spelling, and grammar requirements established by the secretary in this manual. See K.S.A. 77-420. **Any document adopted by reference must be submitted with the proposed regulations. This requirement applies whether or not the document was previously adopted by reference in that regulation or a different regulation.**

The address of the secretary of administration is as follows:

Secretary of Administration  
c/o Dept. of Administration, Legal Section  
Landon State Office Building, Room 107  
900 SW Jackson Street  
Topeka, Kansas 66612-1214

(b) After the proposed regulations are approved by the secretary of administration, submit the proposed regulations to the attorney general for review and approval as to legality. **Any document adopted by reference must be submitted with the proposed regulation. This requirement applies whether or not the document was previously adopted by reference in that regulation or a different regulation.**

The address of the attorney general is as follows:

Attorney General  
Memorial Hall, Second Floor  
120 SW 10th Avenue  
Topeka, Kansas 66612-1597

If approved, each page of a regulation will be stamped, initialed, and dated, first by the secretary of administration and then by the attorney general. If a page is approved by the secretary of administration but is not approved by the attorney general and then the regulation is revised as required by the attorney general, the agency must resubmit that particular page to the secretary of administration for review and approval. The attorney general will stamp only regulations that have already been stamped by the department of administration.

### **ECONOMIC IMPACT STATEMENTS**

(a) At the time of drafting a proposed regulation or amendment to a regulation, prepare a statement of the economic impact of the proposed regulation on all governmental agencies, all persons subject to the regulation, and the general public. An economic impact



statement is required for new regulations, amended regulations, and revoked regulations. An economic impact statement is required for each proposed regulation unless it is part of a set of related regulations. In this case, a single economic impact statement may be developed for each set of related regulations. The economic impact statement must include the following items:

- (1) A brief description of the proposed regulation and its intended effect;
- (2)(A) Whether or not the proposed regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program; and
- (B) whether or not the proposed regulation exceeds the requirements of applicable federal law;
- (3) a description of the cost, the persons who will bear the cost, and those who will be affected by the proposed regulation, including the following:
  - (A) The agency proposing the regulation;
  - (B) other governmental agencies or units;
  - (C) private citizens; and
  - (D) consumers of the products or services that are the subject of the regulation or its enforcement; and
- (4) a description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation. See K.S.A. 77-416.

The economic impact statement for “environmental rules and regulations” must also contain several additional items. (See page 12.)

- ❑ The economic impact statement is often of great interest to parties affected by the regulation, as well as to the joint committee on administrative rules and regulations. Moreover, the process of evaluating the economic impact of a proposed regulation may reveal significant policy issues that agencies need to consider before the regulations are in final form. Therefore, agencies should take care in developing economic impact statements so that they are as comprehensive and informative as possible, given data that is available to the agency.
- ❑ Think broadly when trying to identify potential economic impacts of proposed regulations. Consider whether or not there are less obvious, indirect economic impacts or hidden costs. For example, the economic impact of an increase in the number of continuing education units required for renewal of a license would clearly involve registration costs for the additional training. However, the increase in required continuing education is likely to have a number of other less obvious costs, including travel costs and lost productivity due to time away from work.
- ❑ While it is preferable to develop dollar estimates of the economic impact, agencies may not always have adequate data to do so. In those instances, be sure to describe the nature and anticipated extent of the economic impact.

(b)(1) When preparing the economic impact statement for a proposed regulation, determine whether or not the regulation would have any of the following effects:

- (A) Increases or decreases revenues of cities, counties, or school districts; or
- (B) imposes functions or responsibilities on cities, counties, or school districts that will increase their expenditures or fiscal liability.

If the regulation will have either of these effects, consult with the league of Kansas municipalities, the Kansas association of counties, and the Kansas association of school boards, as appropriate, when preparing the economic impact statement. See K.S.A. 77-416.

(2) Consider maintaining some documentation of the consultation, along with the other documents related to adoption of the regulations. K.S.A. 77-416 does not set out a particular method or procedure for the required consultation. It appears that, as long as advice or information from the appropriate entity is sought, reasonable time is afforded for response, and

the response is considered by the agency, the agency has discretion in determining the procedure for meeting statutory requirements. One method for complying with this requirement may be to mail or fax a copy of the proposed economic impact statement, the proposed regulations, or both to the league of Kansas municipalities, Kansas association of counties, or Kansas association of school boards, as appropriate, along with a request for an oral or written response by a certain date. In this way, a record will be made of the consultation. The addresses of those organizations follow:

League of Kansas Municipalities 300 SW 8th Topeka, Kansas 66603 Phone #: (785) 354-9565 Fax #: (785) 354-4186
Kansas Association of Counties 6206 SW 9th Terr. Topeka, Kansas 66615 Phone #: (785) 272-2585 Fax #: (785) 272-3585
Kansas Association of School Boards 1420 SW Arrowhead Rd. Topeka, Kansas 66604 Phone #: (785) 273-3600 Fax #: (785) 273-7580

(c) In preparing the economic impact statement for any regulation, agencies may consult with other state agencies.

(d) Following the public hearing, revise the economic impact statement to include a statement specifying the time and place at which the public hearing was held and the number of persons attending the hearing. A list of those attending the public hearing should be attached to the economic impact statement.

The state rules and regulations board, joint committee on administrative rules and regulations, or the chairperson of either the committee or the board may request the director of the budget to review the economic impact statement of any regulation and to submit a revised or supplemental statement.

Each statement prepared by the director is to include, if possible, the following estimates:

(1) Dollar estimates of anticipated changes in revenues and expenditures of the state that are attributable to implementation of the regulation; and

(2) an estimate of the immediate and the long-range economic impact of the regulation on persons subject to the regulation and the general public. If no dollar estimate is possible, the statement must include the reasons why a dollar estimate is not provided.

### **ENVIRONMENTAL BENEFIT STATEMENTS**

(a) Certain regulations that meet the definition of “environmental rule and regulation” are subject to specialized adoption requirements. “Environmental rule and regulation” means a regulation that meets one of the following criteria:

(1) It is adopted by the secretary of agriculture, the secretary of health and environment, or the state corporation commission and has as a primary purpose the protection of the environment.

(2) It is adopted by the secretary of wildlife and parks and relates to threatened or endangered species of wildlife as defined in K.S.A. 32-958.

(b) At the time of drafting a proposed environmental regulation or an amendment to such a regulation, prepare a statement of the environmental benefit of the regulation. The environmental benefit statement must include a description of the need for the regulation and the environmental benefits that are likely to accrue as a result of the regulation. This description must include the following elements:

(1) A summary of any applicable research indicating the level of risk to the public health or the environment that is to be removed or controlled by the regulation; and

(2) if applicable, an indication of the level at which specific contaminants controlled by the regulation are considered to be harmful according to currently available research.

The state agency may consult with other state agencies when preparing the environmental benefit statement.

(c) Reevaluate and, when necessary, update the environmental benefit statement at the time of giving notice of hearing on a proposed regulation and at the time of filing a regulation with the secretary of state. Make a copy of the current environmental benefit statement available upon request by any interested party.

(d) The economic impact statement for environmental regulations must include several elements in addition to those required for all regulations. The economic impact statement for environmental regulations must include the following additional information:

(1) A description of the capital and annual costs of compliance with the proposed regulations;

(2) a description of the persons who will bear the capital and annual costs of compliance;

(3) a description of the initial and annual costs of implementing and enforcing the proposed regulations, including the following:

(A) A description of the estimated amount of paperwork; and

(B) a description of the state agencies, other governmental agencies, or other persons or entities who will bear the costs;

(4) a description of the costs that would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs, and those who will be affected by the failure to adopt the regulations; and

(5) a detailed statement of the data and methodology used in estimating the costs used in the statement.

### **PRIVATE PROPERTY PROTECTION CONSIDERATIONS**

(a) The private property protection act establishes requirements for evaluating proposed regulations. See K.S.A. 77-701 *et seq.* The private property protection act is intended to reduce the risk of undue or inadvertent burdens on private property rights resulting from certain lawful governmental actions.

(b) The attorney general has established guidelines to assist state agencies in evaluating proposed governmental actions and in determining whether or not such actions may constitute a “taking.” The guidelines were published in the *Kansas Register*, Vol. 14, No. 51, p. 690 (Dec. 21, 1995) and were based on current law as articulated by the United States supreme court and the supreme court of Kansas. Updates to these guidelines are published annually in the *Kansas Register*.

(1)(A) “Governmental action” means any of the following actions by a state agency that may constitute a taking:

- (i) Proposed legislation;
- (ii) proposed regulations or directives; or
- (iii) proposed agency guidelines and procedures concerning the process of issuing licenses or permits.

(B) “Governmental action” does not include the following:

- (i) Any activity in which the power of eminent domain is formally exercised;
- (ii) the repeal of regulations, elimination of governmental programs, or amendment of regulations, such that limitations on the use of private property are reduced or removed;

(iii) law enforcement activities involving seizure or forfeiture of private property for violations of law or as evidence in criminal proceedings; and

(iv) any state agency action, authorized by statute or by valid court order, in response to a violation of state law.

(2) “Private property” means any real property or interest arising from or relating to any real property in this state that is protected by the 5th or 14th amendment of the constitution of the United States or section 18 of the bill of rights of the constitution of the state of Kansas.

(3) “Take” or “taking” means that, due to a governmental action, private property is taken or its use is restricted or limited by a governmental action such that compensation to the owner of the property is required by the 5th or 14th amendment of the constitution of the United States or section 18 of the bill of rights of the constitution of the state of Kansas.

(c) Each state agency must adhere to guidelines developed by the attorney general regarding promulgation of regulations. Before any “governmental action” that may constitute a taking is initiated, the state agency must prepare a written report that follows the guidelines established by the attorney general and make the report available for public inspection. Therefore, whenever an agency drafts any regulation, the regulation will need to be evaluated in light of the attorney general's guidelines to determine whether or not the proposed regulation would be a “governmental action” that may constitute a taking. If the regulation does constitute a “governmental action” that may result in a taking, the agency must prepare a report that complies with the following, when applicable:

(1) Clearly and specifically identifies the public health, safety, or welfare risk created by the use of the private property;

(2) describes the manner in which the proposed regulation will substantially advance the purpose of protecting public health, safety, or welfare against the specifically identified risk;

(3) sets forth the facts relied upon to establish and justify the need for the restrictions or limitations;

(4) analyzes the likelihood that the regulation that constitutes a governmental action may result in a taking;

(5) identifies any alternatives to the proposed regulation that may accomplish the following objectives:

(A) Fulfill the legal obligations of the state agency;

(B) reduce the extent of limitation of the use of the private property; and

(C) reduce the risk to the state that the action will be deemed a taking; and

(6) demonstrates that any conditions imposed on issuing a permit relate directly to the public health, safety, or welfare purpose for which the permit is to be issued, substantially advance that purpose, and are authorized by law.

(d) The agency must submit the report regarding the regulation constituting a governmental action to the governor and the attorney general prior to implementing the regulation and to the secretary of state at the time of filing the adopted regulation. See K.S.A. 77-706.

(e) If there is an immediate threat to public health, safety, or welfare that constitutes an emergency requiring immediate action to eliminate the risk, the report must be prepared when the emergency action is completed, in which case the report must include a complete description of the facts relied upon by the agency in declaring the need for emergency action.

### **NOTICE OF PUBLIC HEARING**

(a) After the regulation has been approved by the secretary of administration and the attorney general, publish the notice of the public hearing in the *Kansas Register* **at least 60 days** in advance of the hearing. See K.S.A. 77-421. Publication of the notice in the *Kansas Register*



constitutes notice to all parties affected by the regulations. Therefore, the rules and regulations filing act does not require agencies to send notices to each party believed to be interested in the proposed regulation. Hearing dates should be scheduled to allow adequate time following the hearing to make any necessary revisions and to obtain approval of those revisions from the secretary of administration and the attorney general.

(b) The notice of hearing must include the following:

(1) The regulation numbers and a summary of the substance of the proposed regulations;

(2) a summary of the economic impact statement, indicating the estimated economic impact on the following:

(A) Governmental agencies or units;

(B) persons subject to the proposed regulations; and

(C) the general public;

(3) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed regulations;

(4) the address where a complete copy of the proposed regulations, the complete economic impact statement, and if applicable, the complete environmental benefit statement may be obtained;

(5) the date, time, and place of the public hearing and the manner in which interested parties may present their views; and

(6) a specific statement that the 60-day notice period constitutes a public comment period for the purpose of receiving written public comments on the proposed regulations and the address where such comments may be submitted.

(c) In addition to these statements, ensure that your notice of hearing is consistent with the requirements of the federal Americans with disabilities act (ADA) and the Kansas architectural accessibility act. (See page 19.)

(d) The *Kansas Register* is published each Thursday. Submit the notice of hearing to the secretary of state within a reasonable period of time in advance of the desired publication date. A notice of hearing that is under five pages in length must be submitted not later than **noon Wednesday**, eight days before publication. (See timelines for filing deadlines, pages 74 and 78.) Generally, notice documents that are five pages or more in length should be submitted before 5:00 p.m. on the Monday 10 days before the desired publication date. The notice documents should be submitted in duplicate. The fee for publication in the *Kansas Register* is \$6.00 per column inch. The agency will receive a bill upon publication of its public hearing notice. Further information about *Kansas Register* publication requirements can be obtained by contacting the office of the secretary of state at the following address:

*Kansas Register*  
Communications Division  
Secretary of State  
Memorial Hall  
120 SW 10th Ave.  
Topeka, Kansas 66612-1594  
Phone #: (785) 296-3489

(e) The following documents must accompany the notice of hearing sent to the secretary of state:

- (1) A complete copy of the proposed regulations; and
- (2) the complete economic impact statement.

While only one set of regulations and economic impact statements is required by statute, the secretary of state requests that agencies submit an extra set of each with the notice of hearing.

(f) At the time of submitting the notice, the proposed regulations, and the economic impact statement to the secretary of state, mail the notice of hearing to the chairperson of the joint committee on administrative rules and regulations. See K.S.A. 77-421. The notice should be addressed to the chairperson of the joint committee.

While not required by statute, a copy of the notice should also be sent to the legislative research department staff member assigned to the joint committee:

Dr. Bill Wolff  
Legislative Research Department  
State Capitol, Room 545-N  
Topeka, Kansas 66612

(g) As soon as possible after proposed regulations are submitted to the secretary of state with the notice of hearing, the secretary of state will send the regulations and economic impact statement to the joint committee on administrative rules and regulations. Therefore, there is no need for the agency to send to the chairperson of the joint committee a set of the regulations and economic impact statement.

(h) The secretary of state will maintain the proposed regulations and economic impact statement on file for the duration of the public comment period. In this way, interested parties may obtain copies from the secretary of state as well as the agency proposing the regulations. Following the 60-day comment period, they will be discarded.

## **PUBLIC NOTICE AND HEARING; GUIDELINES REGARDING ADA COMPLIANCE**

In order to comply with Title II of the Americans with disabilities act (ADA) while in the process of adopting regulations under K.S.A. 77-421 *et seq.*, the following guidelines apply.

(a) Ensure that the location of public hearings is physically accessible to individuals with disabilities, including the hearing room, parking, entrances, drinking fountains, and rest rooms.

(b) Designate a responsible person in your agency who will be the contact person for any requests for accommodation that may arise during the process of adopting the regulations.

(c) Include the following statement or its equivalent in the notice of hearing published in the *Kansas Register*:

“Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting \_\_\_\_\_, at \_\_\_\_\_.”

(d) In addition to the phone number of the contact person, include in the statement the agency's TTY number, if available, or the number of the Kansas Relay Center (1-800-766-3777). As a courtesy, consider including a statement identifying the location of accessible parking and accessible entrances for individuals with disabilities.

(e) The secretary of state will make the *Kansas Register* available in an accessible format upon request of an individual with a visual impairment so that the notice of hearing will be accessible.

(f) Be prepared to arrange for resources necessary to make requested accommodations, which might include an interpreter during the public hearing for hearing-impaired individuals or, for those with visual impairments, large-print or taped versions of the

regulations, economic impact statements, and other supplemental written materials. Be sure that the contact person ascertains the specific type of accommodation requested. For example, a hearing-impaired individual may prefer a specific type of sign language. Some types of accommodations may be available within the agency. The agency may be able to make the following accommodations:

- (1) Provide a reader;
- (2) make a tape of written documents;
- (3) convert documents to large print using a larger font (14-point) on a word processing program; or
- (4) enlarge documents on a copier.

In other instances, the agency will need to be prepared to make arrangements for accommodations using resources outside of the agency. A list of individuals and organizations who can provide information regarding available resources follows. It may also be helpful to note that the Kansas Relay Center can be accessed for assistance in communicating over the telephone with individuals with a hearing or speech impairment or both. (Dial 1-800-766-3777.)

## ACCOMMODATIONS RESOURCE LIST

### **General Information and Assistance**

Anthony A. Fadale, ADA Coordinator  
Office of the Secretary of Administration  
Landon State Office Building, Room 112A  
900 SW Jackson  
Topeka, Kansas 66612-1214  
Phone #: (785) 296-1389 / FAX #: (785) 296-0043

### **Interpreters for Hearing-Impaired Individuals**

Kansas Commission for the Deaf and Hard of Hearing  
3640 SW Topeka Blvd., Suite 150  
Topeka, Kansas 66611  
Phone #: (785) 267-6100 OR 1-800-432-0698  
Fax #: (785) 267-0655

### **Telephone Relay Services**

Kansas Relay Center  
1-800-766-3777

### **Braille**

See Appendix G

### **Recording Print Materials**

You may wish to use your agency's staff to record materials.  
See Appendix G for additional resources.

### **Large-Print Materials**

You may be able to produce large-print materials by using a larger font on  
your word processor or by enlarging them on your copier.

(g) The general rule under the ADA is that all communications between public entities and the public must be accessible to people with disabilities. Subpart E of the justice department's Title II regulations (28 C.F.R. 35.160) says that, in a public entity's programs and activities, communications with persons who have a disability must be as effective as communications with persons who do not have disabilities. The Title II regulations do not specify how a public entity must ensure accessible communication.

(h) In the preamble to Title II, the justice department interprets auxiliary aids and services to be those aids and services designed to provide effective communication or, in other words, to make aurally and visually delivered information available to persons with hearing,

speech, and vision impairments. In determining which aids would be most appropriate, the state agency should give primary consideration to the request of the individual with the disability.

### **PUBLIC COMMENT PERIOD**

(a) Upon receiving a notice of public hearing from an agency, the joint committee on administrative rules and regulations will schedule a review of the proposed regulations during the 60-day public comment period. As part of the review, the joint committee will give the agency an opportunity to explain the proposed regulations and consider other supporting or opposing statements. This review will form the basis of any public comments submitted to the agency by the joint committee.

(b) Following the review and before the end of the 60-day comment period, the joint committee will send to the agency any written comments it has regarding the proposed regulations or an acknowledgment that the committee has reviewed the proposed regulations without comment.

<p>When reviewing proposed regulations, the joint committee is participating in the public comment period, rather than carrying out its legislative oversight responsibilities. Therefore, comments made by the joint committee regarding proposed regulations should be considered with the same weight as that given to comments made by other individuals or organizations participating in the public comment process.</p>
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(c) If the proposed regulations are adopted, maintain any written comments submitted during the public comment period for not less than three years after the effective date of the regulations.

### **PUBLIC HEARING**

(a) Hold a public hearing on the date stated in the notice. Circulate a sign-in sheet for all those who attend the public hearing so that the agency has a record of the number of

individuals in attendance. Explain to all who attend the hearing the details of the proposed regulation and, if requested to do so, prepare a concise statement of the principal reasons for adopting the regulation. All interested parties must be given a reasonable opportunity to present their views on the regulation, either orally or in writing.

(b) If an agency receives comments about the proposed regulation before the public hearing, including comments from the joint committee on administrative rules and regulations, the agency may determine before the hearing that the regulations will be revised before adoption. In this case, it may be helpful to orally summarize the comments and anticipated revisions during the hearing. **However, agencies should wait until AFTER the public hearing to submit any revisions to the secretary of administration and the attorney general for approval.**

(c) During the hearing, keep written minutes or other records, which may include sound recordings or electronically accessed media. If the proposed regulation is adopted and takes effect, maintain the following documents for not less than three years after the effective date of the regulation:

- (1) The written minutes or other records, including a copy of the regulations as they were presented at the public hearing;
- (2) the list of all persons who appeared at the hearing and whom they represented;
- (3) any written testimony presented at the hearing; and
- (4) any written comments submitted during the 60-day public comment period.

### **ADOPTION OF REGULATIONS**

(a) If deemed appropriate, make changes in the proposed regulation based on the comments received at the public hearing. Each change must be processed through the offices of the secretary of administration and attorney general as explained on page 6. Adequate time



should be allowed after the public hearing for approval by the secretary of administration and the attorney general.

If an agency elects to make major substantive revisions that are unrelated to public comments received or that differ significantly from the publicly proposed amendments, the agency should consider providing an additional notice and hearing. Agencies may wish to consult with the attorney general's office regarding this issue.

(b) Formally adopt the regulation. Agencies headed by an individual accomplish this through a written declaration of adoption signed by the agency head. Agencies headed by a board or commission must adopt a regulation upon a certified roll call vote at an open meeting of the body. A regulation is adopted only upon a majority vote of the total membership of the adopting commission or board. See K.S.A. 77-421.

#### **Open Meetings for Adoption of Regulations**

- ☐ Upon request of any person, agencies headed by a board or commission must provide notice of the meeting at which the regulations will be adopted and a copy of the agenda, if any, relating to the business to be transacted at the meeting.
- ☐ Public meetings may be held by telephone conference call when arrangements are made so that members of the public can effectively hear the proceedings.
- ☐ No binding action can be taken by secret ballot.
- ☐ The requirements for holding an open meeting are set out in the open public meetings act, K.S.A. 75-4317 *et seq.* Agencies may consult with the attorney general regarding questions about open meetings.

If an agency needs to adopt regulations to implement new legislation, the agency may complete all of the steps **other than adoption and filing with the secretary of state** before the legislation takes effect. However, the formal adoption cannot occur until the effective date of all statutes authorizing the regulations. See K.S.A. 77-420a.

## FILING REGULATIONS WITH THE SECRETARY OF STATE

(a) File with the secretary of state the original and two copies of the following documents:

- (1) Each permanent regulation adopted;
- (2) the updated economic impact statement, including the following:
  - (A) A statement of the time and place of the public hearing and the number of individuals who attended the hearing; and
  - (B) the public hearing sign-in sheet;
- (3) the environmental benefit statement, if applicable;
- (4) the takings assessment required under the private property protection act, if applicable; and
- (5) the written declaration of adoption or a certified copy of the roll call vote.

File regulations and associated documents by submitting them to the following address:

Editor, Kansas Administrative Regulations  
Secretary of State  
Memorial Hall  
120 SW 10th Ave.  
Topeka, Kansas 66612  
Phone #: (785) 296-2114

(b) If possible, provide any **new** regulations to the secretary of state on diskette in addition to the original and two copies that are required to be filed. Be certain that the version submitted on diskette is identical to the version approved by the secretary of administration and the attorney general, formally adopted by the agency head, and filed with the secretary of state.

(c) If any documents have been adopted by reference in the regulations, also file a copy of each of these documents with the regulations. If an expensive or lengthy document was

previously filed when adopted by reference in an earlier version of the same regulation or in a different regulation, the agency may contact the secretary of state to discuss alternatives. Each document should be marked to show which regulation or regulations refer to that document.

**NOTE:** For the purpose of avoiding unwarranted expense, the agency may file a regulation without a document adopted by reference if the state rules and regulations board determines that all of the following conditions are met:

- (a) The document is a technical manual of limited public interest.
- (b) The cost of providing file copies of the document is excessive in light of its limited public interest.
- (c) The document will be available for public inspection during normal business hours in the office of the adopting agency. See K.S.A. 77-416.

#### **PUBLICATION OF REGULATIONS IN THE *KANSAS REGISTER*; EFFECTIVE DATE FOR PERMANENT REGULATIONS**

- (a) The secretary of state will publish in the *Kansas Register* the full text of all regulations adopted and filed in accordance with the rules and regulations filing act.
- (b) Each permanent regulation filed with the secretary of state will take effect 15 days after it is published in the *Kansas Register*. See K.S.A. 77-426. As the *Kansas Register* is published each Thursday, the 15th day after publication in the *Kansas Register* will always fall on a Friday. Therefore, permanent regulations generally take effect on the third Friday following publication in the *Kansas Register* or on a later date stipulated in the body of the regulation. If the 15th day is a holiday, the regulation will take effect on the first working day following the holiday, unless a later date has been specified in the body of the regulation.
- (c) In order to estimate when a permanent regulation will take effect, agencies will also need to be aware of *Kansas Register* publication deadlines for permanent regulations. The publication date is determined by the length of the regulations and the date they are filed with the secretary of state's office. Upon filing, the regulations must be typeset by the state printing plant and proofread by the *Kansas Register* staff before publication in the *Kansas Register*. The date

of publication will be determined at the time the agency files its permanent regulations with the secretary of state. All regulations are published in as timely a manner as possible. The agency will receive a bill for the publication fee, which is \$6.00 per column inch.

(d) The secretary of state may authorize an agency to publish a summary of any regulation or group of regulations that is lengthy and expensive to publish. See K.S.A. 75-430(a)(6). In deciding whether or not to publish regulation summaries, the secretary of state will determine whether or not the regulations meet all of the following conditions:

- (1) The regulations are arcane or highly technical.
- (2) The regulations are very lengthy and expensive to publish.
- (3) The regulations are available in published form.
- (4) The summaries sufficiently notify the public about the contents of the regulations.

Detailed guidelines for publishing summaries of regulations can be obtained from the secretary of state's office. A request to publish summaries should be made at the time of filing the regulations with the secretary of state. Agencies should be aware that they will still be responsible for the cost of typesetting and proofreading the full text of the regulations for publication in the K.A.R. volumes.

(e) All permanent regulations that appear in the *Kansas Register* will eventually be incorporated into the K.A.R. volumes. **Each agency needs to review the publication of its regulations in the *Kansas Register* for accuracy and notify the secretary of state's office of any errors to ensure that the regulations are corrected before they are published in the K.A.R. volumes.**

Questions about *Kansas Register* publication deadlines, fees, or other policies may be directed to the following address:

*Kansas Register*  
Communications Division  
Secretary of State  
Memorial Hall  
120 SW 10th Ave.  
Topeka, Kansas 66612  
Phone #: (785) 296-3489

### **REVIEW BY THE JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS**

(a) The joint committee on administrative rules and regulations will review regulations before they are adopted (during the public comment period) and may also review the regulations following their adoption. See K.S.A. 77-436.

(1) The joint committee will provide **comments** to the agency about **proposed** regulations and may state **concerns** about **adopted** regulations. (See page 22 for more information on reviews by the joint committee during the public comment period.) Following its review of proposed regulations, the joint committee forwards a letter to the agency identifying any comments it has regarding the proposed regulations and requesting that the agency provide a written response at the time regulations are filed with the secretary of state. The agency's response to the joint committee should include the following information:

- (A) A summary of comments made by the committee, individuals, and organizations;
- (B) the agency's response to those comments; and
- (C) changes made to the regulations following the hearing.

(2) Each permanent regulation filed with the secretary of state will be submitted to the joint committee for review. At that time, the joint committee will consider the agency's written response to comments and its summary of changes to the regulation. The joint

committee may then choose to evaluate the adopted regulation based solely on the written response, or it may elect to schedule a hearing on the regulations. If a hearing is held, the joint committee gives the agency involved an opportunity to explain and justify its regulations. The joint committee may consider supporting or opposing statements from other parties.

(b) After reviewing the agency's written response or holding a hearing on the regulations, the joint committee may choose to recommend modification or revocation of a regulation by one of three means.

(1) The joint committee may choose to express its concerns through minutes adopted by the joint committee. A copy of the minutes in which the concerns identified by the joint committee are listed will be forwarded to the agency for a response. After considering the concerns expressed by the joint committee, the agency should prepare a letter in which it identifies those changes suggested by the joint committee that it will adopt, if any, and the timeframe in which the agency plans to make the changes. If the agency does not concur with the concerns of the joint committee, the letter should include an explanation of its position. If the agency does not respond positively to the recommendations of the joint committee, as contained in the statement of concerns, the joint committee may recommend some other action it believes appropriate, through introduction of a concurrent resolution or a bill.

(2) The joint committee may authorize the drafting of a concurrent resolution that requests the agency to amend or revoke a regulation and then recommend passage of the resolution. The concurrent resolution is sent to a standing committee of the house or senate and is treated as any other concurrent resolution. If the concurrent resolution passes by a majority vote of both houses of the legislature, the agency may respond by adopting a permanent regulation to address the concerns in the concurrent resolution or by proposing the regulation on a temporary basis if the agency believes this to be necessary to preserve the public peace, health, safety, or welfare. If the agency does not respond positively to the recommendations of the

legislature, as contained in the resolution, the legislature may take some other action that it deems appropriate through a bill.

(3) The joint committee may choose to recommend statutory changes that would redefine the scope of an agency's authority to adopt regulations, revise the substantive law in a way that requires amendments to the regulations, or establish other statutory provisions or directions for the regulations.

## **PROCESS FOR ADOPTING TEMPORARY REGULATIONS**

### **BASIS FOR ADOPTING TEMPORARY REGULATIONS**

A temporary regulation can be adopted if preservation of the public peace, health, safety, or welfare necessitates or makes desirable putting the regulation into effect prior to the time it could be put into effect as a permanent regulation. On occasion, this basis for a temporary regulation may apply to proposed regulations that implement newly passed legislation. In this way, the temporary regulations can take effect in conjunction with the new legislation.

### **PROCEDURES FOR ADOPTING TEMPORARY REGULATIONS**

- (a) Submit the proposed temporary regulation to the secretary of administration, as described under the process for adopting permanent regulations on page 6.
- (b) Submit the proposed temporary regulation to the attorney general, as described under the process for adopting permanent regulations on page 7.
- (c) Develop the economic impact statement as described on page 7 and, if applicable, an environmental benefit statement and the report required for any regulation that constitutes a governmental action for purposes of the private property protection act. (See pages 11 and 13.)
- (d) A public hearing is not required for a temporary regulation, although agencies may choose to hold a public hearing for any temporary regulation. However, given the time frame involved in holding a hearing, it typically is not feasible to hold a hearing before a temporary regulation is adopted.



For additional information regarding the public hearing process, see the following sections:

- ❑ Notice of public hearing: page 15.
- ❑ Public notice and hearing; guidelines regarding ADA compliance: page 19.
- ❑ Public comment period: page 22.
- ❑ Public hearing: page 22.

(e) Formally adopt the regulation, as described on page 23.

(f) Submit the original and **eight** copies of the temporary regulation to the secretary of state; include the additional documents described on page 25 for permanent regulations. The secretary of state requests that agencies provide the original and **eight** copies of the adoption document, the economic impact statement, and the environmental benefit statement.

(g) Proposed temporary regulations are placed on the agenda of the state rules and regulations board by the secretary of state. The board consists of the attorney general, the secretary of state, and the secretary of administration, or designees of these officials, and the chairperson and vice-chairperson of the joint committee on administrative rules and regulations. The proposing agency appears before the board to justify the need for the proposed temporary regulations, using the statutory criterion described previously.

(h) Following approval by the state rules and regulations board, the secretary of state will file the regulations. The effective date of temporary regulations is either the date on which the state rules and regulations board approves the regulations and the secretary of state files them, or a later date stated in the regulation.

(i) Temporary regulations continue in effect for 120 days, on which day they will expire.

(j) The full text of temporary regulations is published in the *Kansas Register*. Refer to page 26 for further information as to publication of regulation summaries.

(k) The joint committee on administrative rules and regulations may review temporary regulations as they are filed. Generally, the committee will review a proposed permanent regulation that is identical in substance to the temporary regulation.

## **SIMULTANEOUS ADOPTION OF TEMPORARY AND PERMANENT REGULATIONS**

Some agencies may find that it is more efficient to proceed with adopting the permanent form of a regulation at the same time they adopt the regulation on a temporary basis. To avoid any lapse in coverage when the temporary regulation expires, each agency should act quickly to schedule its public hearing for the permanent version of the regulation and to meet in a timely manner the requirements of the secretary of administration, attorney general, and secretary of state for approval, filing, and adoption of the permanent regulation.

When an agency chooses to process a temporary and permanent regulation at the same time, the following procedure is used:

(a) Submit the temporary and the permanent versions of the regulation to the secretary of administration for approval. Often the content of the temporary regulation and the permanent regulation is identical. (See page 60 for further information regarding the histories of permanent and temporary regulations that are processed together.)

(b) Submit the temporary and the permanent versions of the regulation to the attorney general's office for approval.

(c) Develop the economic impact statement as described on page 7 and, if applicable, the environmental benefit statement and the report required for any regulation that constitutes a governmental action for purposes of the private property protection act. (See pages 11 and 13.) These documents should state that the regulation is proposed on both a temporary and a permanent basis.

(d) Give a 60-day notice of the public hearing for the permanent regulation and, if the agency elects, for the temporary regulation. If a hearing is held for the temporary regulation, the notice should state that the regulation is proposed on both a temporary and a permanent basis.

For additional information regarding the public hearing process, see the following sections:

- ❑ Notice of public hearing: page 15.
- ❑ Public notice and hearing; guidelines regarding ADA compliance: page 19.
- ❑ Public comment period: page 22.
- ❑ Public hearing: page 22.

(e) Adopt the temporary and the permanent versions of the regulation separately.

Use the adoption procedures that are described on page 23. If a hearing is not held for the temporary regulation, it may be adopted as soon as it is approved by the secretary of administration and attorney general and the economic impact statement and other required documents are prepared.

(f) After adoption, submit the original and eight copies of the temporary regulation and the original and two copies of the permanent regulation to the secretary of state. Include eight copies of each additional document described on page 25 for the temporary regulation and two copies of the same documents for the permanent regulation.

## **SECRETARY OF ADMINISTRATION'S REQUIREMENTS**

The first step in the process for adopting regulations is submitting proposed temporary or permanent regulations to the secretary of administration for approval of organization, style, spelling, and grammar.

If changes in a regulation are recommended by the secretary of administration, provide the original version containing the secretary of administration's requested edits when resubmitting the revised regulation for approval. This saves time and focuses the review process. **Any change in a proposed regulation at any step of the process after initial approval by the secretary of administration requires reapproval of each revised page by the secretary of administration.**

If you need help drafting regulations or a clarification of the following requirements, please call the department of administration at 296-6000, before you have your regulations in a final form.

Due to a variety of circumstances, some agencies need or desire additional assistance in preparing regulations. To accommodate these agencies, the department of administration provides fee-for-service editing and drafting of regulations. Please see Appendix H for details.

The following section contains requirements, conventions, and examples from the secretary of administration that will assist you in writing your regulations. These requirements, conventions, and examples are categorized according to general grammar, as well as regulatory form and language.

Several aspects of regulatory style in some ways reflect statutory style. Therefore, some of the conventions described below vary from mainstream usage (e.g., the rules governing capitalization). Beyond these regulatory conventions, the department of administration strives to edit according to current standards of grammar, spelling, and usage. The primary references

used by the department of administration staff responsible for reviewing regulations are these:

*Merriam-Webster's Collegiate Dictionary* (10th ed., 1999), *Webster's New Universal*

*Unabridged Dictionary* (1996), and *The Gregg Reference Manual* (9th ed., 2001). Updated

versions of these references will be used when necessary.

**PLEASE NOTE!**

**THE AGENCY ADOPTING REGULATIONS MUST DRAFT THE REGULATIONS, MAKE POLICY DECISIONS RELATED TO THEIR SUBSTANCE, AND IMPLEMENT THEM. THEREFORE, EDITS MADE BY THE DEPARTMENT OF ADMINISTRATION ARE NOT INTENDED TO CHANGE THE MEANING OF A REGULATION IN ANY WAY. IF ANY EDITORIAL REVISION DOES INADVERTENTLY CHANGE THE MEANING OF A REGULATION, IT IS THE AGENCY'S RESPONSIBILITY TO NOTIFY THE DEPARTMENT OF ADMINISTRATION STAFF MEMBER WHO REVIEWED THE REGULATION. THE STAFF MEMBER WILL WORK WITH THE AGENCY TO DEVELOP ACCEPTABLE LANGUAGE THAT CONVEYS THE AGENCY'S INTENT.**

**GENERAL GRAMMAR**

**ACTION VERBS**

(a) *Use action verbs.* Draft your sentences to use action verbs instead of verb phrases. Verb phrases include participles, infinitives, and gerunds. Action verbs are shorter and more direct.

**DON'T SAY:**

“give recognition to”

“have need of”

“make application”

“make payment”

“make provision for”

“is applicable”

**SAY:**

“recognize”

“need”

“apply”

“pay”

“provide for” or “provide”

“applies”

(b) *Avoid sentences that begin with “there” or “it”* because these sentences are often needlessly wordy or indirect.

<b>DON'T SAY:</b>	“There shall be three examinations given each year by the selection committee.”
<b>SAY:</b>	“The selection committee shall give three examinations each year.”

### **ACTIVE VOICE**

*Use the active voice.* This rule is especially effective when you impose a duty or confer a power or privilege. The active voice eliminates confusion by forcing you to name an “actor” in the regulation. This makes clear to the reader who is to perform the duty or who is vested with the power or privilege. If possible, arrange the sentence to name the actor first and then the recipient.

<b>DON'T SAY:</b>	“The examination fee shall be submitted by the applicant with the completed application.”
<b>SAY:</b>	“Each applicant shall submit the examination fee with the completed application.”

### **SELF-DIRECTORY LANGUAGE**

An exception to the rule regarding active voice is applied in order to avoid using “self-directory” or “self-regulatory” language. Self-directory provisions *regulate the agency* by stating what *the agency* shall or may do. However, the agency may wish to inform regulated parties as to what actions the agency will or may take in certain situations. The passive voice may be used in order to provide this type of information without introducing language that regulates the agency or agency head.

**DON'T SAY:** "Upon review of the application, the secretary may issue a temporary license."

**SAY:** "Upon review of the application, a temporary license may be issued by the secretary."

### **PARAGRAPH AND SENTENCE STRUCTURE**

(a) *Clarify and simplify the words used.* When both a word in common usage and a technical term can be used to represent the same thought, use the word in common usage because it is more easily understood. Terms of speech that are understood by a particular profession or industry may not be understood by the average layperson.

(1) If you must use a technical term, define it. But define it only once--the first time that the term is used. After it has been defined, use the technical term without further definition; do not use an alternative expression for the term. (See page 48 for further guidelines regarding definitions.)

(2) Avoid using Latin terms, such as "infra" for "below" or "supra" for "above." The English terms are sufficient and are more easily understood by the reader.

(3) In general, avoid "legalese" expressions, such as "hereinabove," "thereto," and "hereby."

(b) *Write brief sentences and paragraphs.* Brief sentences and paragraphs are more easily understood.

(1) Limit yourself to one or two thoughts in a sentence, and a single relationship of thoughts in a paragraph. Avoid ambiguity.

(2) Many long sentences are complex or compound sentences. They should be rewritten in two or more short sentences.



(c) If only *one or two simple conditions* must be met before a rule applies, *state the conditions first* and then state the rule. The reader of your regulation is interested in finding out whether or not a rule applies before learning the rule.

**DON'T SAY:** “An employee may request reimbursement of miscellaneous travel expenses if the employee is transferred from one official duty station to another official duty station and is eligible under subsection (b) of K.A.R. 1-17-28.”

**SAY:** “Each employee who is transferred from one official duty station to another official duty station and who is eligible under subsection (b) of K.A.R. 1-17-28 may request to be reimbursed for miscellaneous travel expenses incurred during the transfer.”

(d) *State the rule first* and then list the conditions if *two complex conditions*, or more than two conditions, must be met before a rule applies. This structure avoids the confusion that comes from grouping a large mass of conditions together before a rule. Listing provides white space that separates the various conditions. Listing can also help you avoid the problems of ambiguity caused by the words “and” and “or.” When you list, use all of the following rules:

- (1) Be certain that all items in the list belong in the same classification.
- (2) Be certain that each item in the list corresponds, both in substance and form, to the introductory language for the list.
- (3) Be certain that there is a rationale for the order in which the items appear, such as moving from general to specific items.
- (4) End the introduction with a complete clause, followed by a colon.
- (5)(A) For a list of fragments, capitalize the first word of the first item, and end each item in the list, except the last item, with a semicolon.
- (B) For a list of complete sentences, capitalize the first word of each item, and end each item in the list with a period. For enhanced clarity, try to avoid an EXCEPTION to this rule, which occurs when a list of complete sentences is embedded within a list of fragments.

(6)(A) For a list of fragments, after the semicolon in the next-to-last item in the list, write “and” or “or,” as appropriate.

(B) For a list of complete sentences (each ending with a period), since there will be no “and” or “or” after the next-to-last item in the list, be certain that the introduction to the list accurately indicates whether all items or only one item in the list applies.

(7) End the last item in the list with a period.

**EXAMPLE:**

(a) “Any licensee may employ one or more unlicensed assistants if the licensee fulfills these conditions:

- (1) Provides direct and continuing administrative and professional supervision to each unlicensed assistant;
- (2) has sufficient contact with each client to plan effective and appropriate service;
- (3) is available to each client for emergency consultation and intervention;
- (4) plans the procedures to be used by each unlicensed assistant and informs each assistant of those plans; and
- (5) provides space for each unlicensed assistant in the same physical setting as the licensee, unless otherwise approved by the board.”

(e) If two paragraphs or sections are similar in substance, *use proper parallel structure*. This is an important drafting technique to improve accuracy and clarity and to uncover hidden problems.

**DON’T SAY:** “Each plant shall provide: (a) One pair of rubber gloves;  
(b) an easily accessible shower or a container of clean water of sufficient size to immerse an exposed worker;  
(c) a splash-proof pair of goggles; and  
(d) an approved gas mask covering the whole face shall be provided with ammonia canisters and intact seals.”

**SAY:** “Each plant shall provide the following safety equipment: (a) A pair of rubber gloves;  
(b) an easily accessible shower or a container of clean water of sufficient size to immerse an exposed worker;  
(c) a splash-proof pair of goggles; and  
(d) an approved gas mask that covers the whole face and is equipped with ammonia canisters and intact seals.”

## **AMBIGUITY**

An ambiguous sentence is a sentence that a reader can interpret in two or more ways.

Ambiguity has at least two possible sources: word order and word meaning.

(a) *Word order.* The position of words in a sentence is the principal means of showing the relationship of the words. Group words that are related in thought, but separate words that are not related. The following conventions address the most common word order problems.

(1) *Avoid misplaced modifiers.* The careless placement of a modifier may result in a sentence that has several possible meanings.

**DON'T SAY:** "John saw Jane driving down the street."

**SAY:** "John, while driving down the street, saw Jane."

—unless you mean—

"John saw Jane, while Jane was driving down the street."

(2) *Avoid vague or ambiguous pronoun references.* If a pronoun could refer to more than one person or object in a sentence, repeat the name of the individual or object. In general, it is best to avoid personal pronouns in regulations. (See also the section regarding "Gender-Specific Terminology" on page 51.)

**DON'T SAY:** "If the intern is unable to meet the deadline specified by the supervisor, he or she may request an extension from the secretary."

**SAY:** "If the intern is unable to meet the deadline specified by the supervisor, the supervisor may request an extension from the secretary."

(3) *Avoid grouping together two or more prepositional phrases.* A common example of a word order problem occurs when two or more prepositional phrases are grouped together in a sentence.

**DON'T SAY:** “Each subscriber to a newspaper in Washington, D.C.”

**SAY:** “Each newspaper subscriber who is in Washington, D.C.”

—unless you mean—

“Each subscriber to a newspaper published in Washington, D.C.”

(b) *Word meaning.* Problems of word meaning occur when one word or phrase is open to several possible interpretations. The following conventions address the most common problems of word meaning.

(1) *Use the singular noun rather than the plural noun.* To the extent your meaning allows, use a singular noun instead of a plural noun. You will avoid the problem of whether the rule applies separately to each member of a class or jointly to the class as a whole.

**DON'T SAY:** “The employer shall issue security badges to the employees who are assigned to work with infants and toddlers.”

**SAY:** “The employer shall issue a security badge to each employee who is assigned to work with infants and each employee who is assigned to work with toddlers.”

—unless you mean—

“The employer shall issue a security badge to each employee who is assigned to work with both infants and toddlers.”

*(There are other possible meanings.)*

(2) *Draft an expression of time as accurately as possible.* You can eliminate uncertainty as to when a time period begins or ends by clearly stating the first and last days of that period.

**DON'T SAY:** "From July 1, 2001, until June 30, 2002 . . . ."

**SAY:** "On and after June 30, 2001, and before July 1, 2002 . . . ."

If a time period is measured in whole days, use the word "day" instead of "time."

A reader may interpret the word "time" to mean an exact time during the day or night an event occurs.

**DON'T SAY:** "Thirty days after the time when . . . ."

**SAY:** "Thirty days after the day on which . . . ."

(3) *Draft an expression of age as accurately as possible.* Similar problems occur when you express an age requirement. The expression "more than 21 years old" has two possible meanings. A person may be "more than 21" on that person's 21st birthday, or on that person's 22nd birthday. Depending upon which meaning you intend, clarify the ambiguity as follows:

**DON'T SAY:** "A person who is more than 21 years old . . . ."

**SAY:** "A person who is 21 years old or older . . . ."

—unless you mean—

"A person who is 22 years old or older . . . ."

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**DON'T SAY:** "Between the ages of 16 and 20 . . . ."

**SAY:** "A person who is 16 years old or older but no more than 20 years old . . . ."

## **DIRECTNESS**

(a) *Express an idea in the positive.* If you can accurately express an idea either positively or negatively, express it positively. Avoid use of the negative.

**DON'T SAY:** "Each licensee shall not submit renewal forms after July 1 of each year."  
**SAY:** "Each licensee shall submit the appropriate renewal form on or before July 1 of each year."

(b) If a prohibition is necessary, "*no*" *may be used* before the subject of a sentence *if it is a simple prohibition*.

**EXAMPLE:**  
"No licensee shall have an ownership interest in a distributor."

Use "... shall not ..." rather than "no ... shall" when the prohibition is more complex and has multiple phrases. This is especially important if there is a phrase between the subject of the sentence and the word "shall" in the sentence.

**DON'T SAY:** "No applicant living in Kansas who has successfully completed an approved course of study shall be required to ..."  
**SAY:** "Applicants living in Kansas who have successfully completed an approved course of study shall not be required to ..."

## **CONDITIONS**

*Use the terms "if" and "when" to introduce a condition.* Do not use the terms "where" or "should" for this purpose.

(a) Introduce a simple condition or a condition that may or may not occur with the word "if."

**EXAMPLES:**

“If either party to the proceeding does not appear at the hearing, the hearing officer may continue the hearing to a later date.”

“If a licensee accumulates more than 1,000 kilograms of hazardous waste, the licensee shall comply with the requirements of subsection (g).”

- (b) Introduce a condition that relates to time or a condition that is considered inevitable with the word “when.”

**EXAMPLE:**

“When the survey team has completed its review, the applicant shall be given written notification of each violation.”

**“SHALL” AND “MAY”**

*Use the word “shall” to impose an obligation to act; do not use the word “must” for this purpose. Use the word “may” to indicate permissible action. See the following section for more information on the use of “each” and “any” with “shall” and “may.”*

- (a) Do not use the word “shall” if the actor is not required to perform some act.

**DON’T SAY:** “One or more of the application procedures shall be waived by the director if, in the director’s discretion, it is determined that. . . .”

**SAY:** “One or more of the application procedures may be waived by the director if the director determines that. . . .”

- (b) Do not use “shall” or “may” as part of a condition.

**DON'T SAY:** "An individual with a lapsed license shall not engage in professional practice until the individual shall have reinstated the license."

**SAY:** "An individual shall reinstate a lapsed license before engaging in professional practice."

(c) Do not use the expression ". . . may not . . . ." Always use "shall," "shall not," or "may."

**DON'T SAY:** "The applicant may not . . . ."

**SAY:** "The applicant shall not . . . ."

**UNLESS YOU MEAN:** "The applicant may . . . ."

(d) Do not state that a regulated party "should" take some action. Such a statement is not enforceable.

### **"EACH," "ANY," AND "SUCH"**

Use "each" and "any" to write in the singular. One device that avoids ambiguity is writing in the singular. In the English language, we normally place an article such as "the" or "a" before a singular noun. However, a drafter must violate this normal practice in cases in which use of the article "a" or "an" creates an ambiguity.

**DON'T SAY:** "The licensee shall make medical services available to a person 65 years old or older."

[Can one licensee discharge this duty by providing medical services to only one person 65 years old or older?]

**SAY:** "Each licensee shall make medical services available to each eligible person who is 65 years old or older."

[Is it clear that the licensee cannot discharge that obligation by providing medical services to only one person 65 years old or older?]



To avoid ambiguity, follow these conventions:

- (a) Use “each” to impose an obligation to act.

**EXAMPLE:** “Each steward shall file . . . .”

- (b) Avoid using “each” when imposing a prohibition. Use a singular article such as “a,” “an,” or “the” or write in the plural.

**DON’T SAY:** “Each licensee shall not . . . .”

**SAY:** “The licensee shall not . . . .”  
—OR—  
“Licensees shall not . . . .”

- (c) Use “any” to grant a right, power, or privilege.

**EXAMPLE:** “Any person may request a . . . .”

- (d) Generally, do not use the word “such.” Use “the” or, if no ambiguity results, certain pronouns, including “that,” “those,” “it,” and “them,” to refer to something already named in that sentence or paragraph.

**DON’T SAY:** “The administrator shall file a report within 24 hours of the incident. The administrator shall include in such report . . . .”

**SAY:** “The administrator shall file a report within 24 hours of the incident. The administrator shall include in the report . . . .”

### **DEFINITIONS**

- (a) *Avoid unnecessary definitions.* The main purpose of a definition is to achieve clarity without needless repetition. For this reason, it is unnecessary to define ordinary words that are used in their usual dictionary meaning.

**DON'T SAY:** “‘Trash can’ means a receptacle for waste material.”

(b) *Do not define a term that is used only once or infrequently.* If a term is used only once or infrequently, spell out the meaning of the term at those few places it appears in the regulations. Occasionally, a term that is used infrequently must be defined if succeeding definitions rely upon understanding that term.

(c) *Do not include part or all of the term being defined in the text of your definition; avoid circular definitions.* A true definition should not include the term being defined as part of the definition. This forces the reader to consult a dictionary or look elsewhere in the regulations for the complete meaning.

(d) *Draft the regulations first, and then draft the definitions.*

(1) It is difficult to determine how many times a particular word or concept will be used in a set of regulations before you start drafting. If you draft definitions before you draft your regulations, you might define a word that is not used.

(2) Often a concept that is used in a set of regulations is complex, and you must develop a phrase to use as shorthand for the concept. If you develop the phrase before you draft the regulations, the phrase might not be as appropriate as one developed during the process of drafting.

(e) *In general, definitions within a definitional regulation are most accessible when arranged in alphabetical order.* It is often helpful to place all the definitions for an agency or a particular article in one definitional regulation. Definitional regulations typically are placed at the beginning of the agency’s regulations or an article. Usually alphabetical order will provide a readily accessible organizational style for this type of regulation. However, using alphabetical order may not always be preferable; using an alternate organizing principle (chronological or spatial, etc.) may enhance the clarity of the definitions in some instances.

When including a few definitions within a nondefinitional regulation (e.g., within a subsection in a regulation that is not primarily composed of definitions), arrange them in the most effective order of presentation.

(f) *Do not use synonyms.* Do not use different terms to mean the same thing. Use the same word consistently to convey the same meaning. For example, if you first use the term “income,” do not switch later to “wage” or “salary.” Doing so might suggest that the alternate term is intended to convey a different meaning from that assigned to the original term. Therefore, use the same term throughout the regulation.

### **CROSS-REFERENCES**

(a) *Use cross-references sparingly and carefully.* Too many cross-references can make a regulation difficult to read and understand. Include a cross-reference only when it is essential to the meaning of the provision, or limits or makes an exception to the provision.

(b) *Make each cross-reference an aid for the readers.* If you find it necessary to include a cross-reference, make it as specific as possible, i.e., cite the specific article, regulation, or subsection or paragraph within the regulation. See page 64 for more information on drafting references.

**DON'T SAY:** “. . . as required by these regulations.”

**SAY:** “. . . as required by K.A.R. 17-2-5.”  
“. . . as required by article 2 of these regulations.”

(c) If you amend the outline structure of a regulation, be sure to *check for cross-references* in that regulation and other regulations that also may need to be adjusted.

(d) *Consider using a cross-reference for documents adopted by reference.* If a document is adopted by reference in one regulation, it is not necessary to again adopt the same document by reference in subsequent regulations of the same agency. Instead, you may identify

the document and then add a cross-reference to the regulation in which it was adopted by reference, e.g. “40 C.F.R. part 761, as adopted by reference in K.A.R. 28-29-108.” When submitting the regulation to the secretary of administration and the attorney general, please provide a copy of the regulation in which the document was adopted by reference. In addition, the secretary of administration and the attorney general may also need to review the document adopted by reference in order to carry out their duties.

### **GENDER-SPECIFIC TERMINOLOGY**

- (a) *Avoid the use of a gender-specific pronoun when both sexes are involved.*

**DON'T SAY:** “The applicant shall submit his completed application form.”

—OR—

“The applicant shall submit his/her . . . .”

**SAY:** “The applicant shall submit the completed application form.”

- (b) *Avoid the use of a gender-specific job title.*

**DON'T SAY:** “Chairwoman or chairman”

**SAY:** “Chairperson”

### **COMPUTATIONS**

*Present computations clearly.* There are two approaches to drafting computations. You may use a list, or you may use a formula.

## **EXAMPLES:**

### List:

“24-6-32. Computing retirement fund withholdings. The employer shall compute the retirement fund withholding for each employee as follows:

- (a) Subtract \$3,000.00 from the employee's gross pay for the fiscal year;
- (b) multiply this result by .05; and
- (c) divide the product obtained under subsection (b) by 26.”

### Formula:

“24-6-32. Computing retirement fund withholdings. The employer shall use the following formula to compute the retirement fund withholding for each employee:

[(Employee's gross pay for fiscal year - \$3,000) x .05]/26 biweekly withholding periods.”

## **MEASUREMENTS**

In general, use Fahrenheit designations for any temperature references within a regulation. An exception to this guideline is any case in which an alternate scale (e.g., centigrade or Celsius) is preferable for scientific, technical, or other substantive reasons.

## **WORDS OR EXPRESSIONS TO AVOID**

On the following page are two columns of terms. The first is a list of terms that should be avoided, and the second is a list of their preferred replacements.

<b>DO NOT SAY</b>	<b>SAY</b>
and/or	___or___, or both
at that time	then
during the time that	while
etc.	(no replacement--do not use)
for the reason that	because
hereinabove	above
his/her	(see page 51 )
in cases where	“if” or “when”
infra	below
is unable to	cannot
is authorized to	may
may, at his discretion	may
no later than	not later than
page(s)	page or pages
prior to	before
provided that	if
subsequent to	after
such	this, that, these, those
supra	above
thereof	of it, of them (or delete)

## **REGULATORY FORM AND LANGUAGE**

### **TECHNICAL REQUIREMENTS**

(a) Regulations are to be typewritten on standard typing paper (8 1/2 by 11 inches) and submitted in double-spaced type. Each regulation must be submitted on a separate page or pages except when a group of consecutively numbered regulations are being revoked. (See Revocations, page 61.) It is helpful to use 1 1/2 inch margins for the top and bottom of the page

so that there is adequate room for the approval stamps of the secretary of administration and attorney general.

(b) Under the direction of the secretary of state, identify each regulation with a distinguishing number before submitting the regulation to the secretary of administration.

Each K.A.R. number has three parts, which identify the agency, the article (a group of related regulations), and the regulation's place in that article.

**EXAMPLE:**

K.A.R. 1-23-3 =

<u>Agency</u>	1--- the department of administration;
<u>Article</u>	23 --- State van pool program;
<u>Regulation</u>	3 --- the third regulation in Article 23— Passenger requirements.

(c) Once a regulation has been revoked, that K.A.R. number may not be reused in the future.

(d) Multiple-page regulations must include a page number and the regulation number in the UPPER RIGHT-HAND corner of each page, except the first.

**CAPTIONS**

Precede each regulation with a brief caption. The caption should give an indication of the contents of the regulation. Type the first letter of the caption in uppercase with all other letters of the caption in lowercase, except for acronyms or proper names that are normally capitalized in the regulatory style. (See page 63.) For these proper names, use uppercase for only the first letter. Follow the caption with a period. Avoid long captions.

## **ORGANIZATION AND OUTLINE FORM**

(a) Be certain that there is a clear internal organizational framework for each regulation and for each series of regulations.

Each regulation should generally follow this order:

- (1) The K.A.R. number;
- (2) a short caption;
- (3) the most significant general rule;
- (4) any subordinate provisions; and
- (5) the history, including the authorization and implementing sections.

### **Confine each regulation to a specific, narrowly defined topic.**

It is preferable to have a number of short, related regulations, rather than one long, complicated regulation. There are a number of benefits to limiting the length and complexity of each regulation.

- ❑ A short regulation is much more likely to be simple, clear, and readily understood. The outline form for long regulations is frequently confusing or inadequate and, therefore, contributes to poor organization of the material.
- ❑ Long regulations are more expensive to publish in the *Kansas Register* each time that the regulation is amended.
- ❑ Each time even a small amendment to the regulation is necessary, the **entire regulation is opened to review** by the department of administration, attorney general, and joint committee on administrative rules and regulations, and to public comments. With a long regulation it is more likely that changes unrelated to the intended amendment will be requested by those parties due to its length.

(b) If a regulation contains a number of paragraphs, its underlying organization should be made explicit by using an outline form.

When subdividing regulations through an outline form, begin with lowercase letters. Use standard Arabic numbers next, then capital letters, and finally small Roman numerals. Surround



each subcategory letter or number with parentheses to set the letter or number apart from the text. Do not use a period after the letter or number. Indent each subcategory letter or number other than subsection (a) as you would a new paragraph.

<b>INCORRECT:</b>	<b>CORRECT:</b>
1-5-1	1-5-1
A.	(a)
B.	(b)
1.	(1)
2.	(2)
3.	(3)
a.	(A)
b.	(B)
i.	(i)
ii.	(ii)

The correct manner and sequence of using letters and numbers listed above correspond with the methods by which statutes in the state of Kansas are subcategorized. The intent of using this system is to make regulations conform in organizational style to the statutes, even though they may differ from accepted English language methods of subcategorization.

(c) When using the outline form, be sure that you do not use the first letter or number of a sequence unless there are other letters or numbers of the sequence that follow. For example, do not use an “(a)” unless there is a subsection “(b).” Do not use a “(1)” unless there is a paragraph “(2).”

(d) Avoid subdividing a regulation beyond the use of capital letters. Antecedents may easily become confused or forgotten when a regulation is subdivided to this degree. If a subsection you are drafting seems to require subdivisions past this point, reconstruct or divide the regulation to avoid further subdivisions, or break the regulation into two or more regulations.

(e) In drafting cross-references, refer to the first level of the outline form (small letters) as a “subsection,” and lower levels as “paragraphs.” For example, refer to “subsection (b),” but use “paragraph (b)(2)” or “paragraph (a)(1)(E).”

### **AMENDED REGULATIONS**

(a) When amending an existing regulation, the new text in the proposed regulation must be underlined or printed in italics. While italics are permitted, underlining is preferred as it is much clearer, particularly for punctuation. Deletions are shown in canceled type (strike type) and precede new material.

(b) Always determine what language is currently in effect. Check to **be sure that all existing language and punctuation are accurately retained or shown in strike type**. When reviewing amended and deleted language for accuracy, use a reliable source in which the current, **permanent** version of the existing regulation appears, such as the appropriate bound volume of Kansas administrative regulations, the most recent K.A.R. supplement, the *Kansas Register*, or a stamped copy of the last permanent regulation filed with the office of the secretary of state. If any discrepancy exists between the latest published version of a regulation and the double-stamped original version that was filed with the secretary of state, the latter will control. The secretary of state’s office can assist in verifying the correct language of regulations.

If it becomes necessary to amend a temporary regulation before it expires with another temporary regulation, refer to the language in the current temporary regulation, not the language of the permanent regulation.

(c) **If an entire regulation is new, do not underline it.** If a regulation is to be revoked, the content should not be shown in strike type. (See Revocations, page 61.)

(d) In the history, any revisions to the citations of authorizing and implementing statutes must be shown with strike type and underlining. However, strike type and underlining

are not used in the portion of the history that follows the authorizing and implementing statutes.  
(See “Histories,” below on this page.)

(e) Avoid many small deletions and additions within one or two sentences. A sentence interspersed with strike type and underlining is distracting and difficult to comprehend, and portions of the old text may be dropped inadvertently when there are a number of changes in a short space. In such a case, it is preferable to strike the existing sentence, rewrite the sentence, and underline the new provisions.

(f) Do not strike or underline letters only; the entire word should be canceled, re-written, and underlined.

**DO NOT USE:** “rules”

**USE:** “~~rules~~ rule”

If only the case of a letter (its capitalization) is changed, no notation is required.

**EXAMPLE:** “~~Upon receiving approval,~~ The applicant shall . . . .”

### **HISTORIES**

(a) Update the history of a regulation each time it is amended. The history, which appears at the end of the regulation and is in parentheses, must include the following elements:

- (1) A citation to the specific statute or statutes that authorize adoption of the regulation;
- (2) a citation to the specific statute or statutes that are implemented or interpreted by the regulation, which in some cases may be the same as the authorizing statute;
- (3) the date the regulation first became effective. A regulation may have more than one effective date if the regulation was first adopted on a temporary basis;

(4) the date of each temporary or permanent amendment and the number assigned by the secretary of state for each temporary amendment to the regulation; and

(5) one of the following notations to indicate whether the regulation is proposed to be adopted on a temporary or permanent basis, followed by a space for the secretary of state to fill in the effective date.

**EXAMPLE:**

( . . . ; effective P-\_\_\_\_\_. ) —OR— ( . . . ; effective, T-\_\_\_\_\_, \_\_\_\_\_. )  
( . . . ; amended P-\_\_\_\_\_. ) —OR— ( . . . ; amended, T-\_\_\_\_\_, \_\_\_\_\_. )  
( . . . ; revoked P-\_\_\_\_\_. ) —OR— ( . . . ; revoked, T-\_\_\_\_\_, \_\_\_\_\_. )

Each item is separated by a semicolon, and the history ends with a period and parenthesis.

(b) Update the citations to the statutes that authorize and are implemented by the regulation so that the citations indicate where each statute is **currently** published. Use strike type and underlining to show any changes to the statutory citations in each amended regulation. If the regulation is adopted or amended to implement a new or amended statute, cite the session laws of Kansas. If the session laws have not been published, cite the bill number and the appropriate section of the bill.

**EXAMPLE:**

(Authorized by K.S.A. ~~4987~~ 2000 Supp. 83-2019c; implementing K.S.A. 83-4001c, as amended by 2001 SB 510, § 3; effective May 1, 1988; amended, T-\_\_\_\_\_, \_\_\_\_\_. ; amended P-\_\_\_\_\_. )

(Authorized by K.S.A. 83-2019c, as amended by L. 2001, Ch. 32, § 2; implementing L. 2001, Ch. 32, § 1; effective P-\_\_\_\_\_. )

(c) In some instances, a regulation is both authorized by and implementing a particular statute. In such a case, the statute should be cited as follows:

**EXAMPLE:**

(Authorized by and implementing K.S.A. 83-2019; effective P-\_\_\_\_\_.)

(d) In some instances, regulations are authorized by or implement more than one statute. When this occurs, cite each authorizing statute in numerical order and each statute implemented in numerical order.

**EXAMPLE:**

(Authorized by K.S.A. 41-210 and 41-211; implementing K.S.A. 2000 Supp. 41-209, as amended by L. 2001, Ch. 154, § 4, K.S.A. 41-211 and 41-213; effective P-\_\_\_\_\_.

(e) Prior to 1980, only an authorizing statute citation was required. A citation to the statute or statutes that are implemented by a regulation must be added when that regulation is being amended for the first time since 1980.

(f) The portion of the history that records the date the regulation took effect and the date of each amendment is cumulative. Copy each date from the history of the existing regulation before adding the new amendment at the end of the history. **Strike type and underlining should not be used in this portion of the history.**

(g) The secretary of state will assign a number to each temporary regulation. All temporary regulation history numbers begin with a “T.” Although the secretary of state will not assign a number until a temporary regulation has been approved by the state rules and regulations board, agencies should show the number and effective date in the history by leaving a blank space, as indicated in the following examples:

**EXAMPLE:**

Temporary regulation during the adoption process: (Authorized by K.S.A. 83-2019c; implementing K.S.A. 83-4001c; effective May 1, 1990; amended, T-\_\_\_\_\_, \_\_\_\_\_.)

Permanent regulation processed with temporary regulation: (Authorized by K.S.A. 83-2019c; implementing K.S.A. 83-4001c; effective May 1, 1990; amended, T-\_\_\_\_\_, \_\_\_\_\_; amended P-\_\_\_\_\_.)

Permanent regulation following adoption and filing of both the temporary and permanent regulation: (Authorized by K.S.A. 83-2019c; implementing K.S.A. 83-4001c; effective May 1, 1990; amended, T-109-9-12-00, Sept. 12, 2000; amended Jan. 10, 2001.)

**REVOCATIONS**

(a) When revoking a regulation, all that is shown is the regulation's K.A.R. number and the history with the **existing** authorization and implementation section, the **existing** list of effective and amendment dates, a "P" or "T" following the word "revoked," and a blank for the revocation date. The statutory references in the history should not be updated, and the caption and content of the regulation should not be shown in strike type.

**EXAMPLE:**

1-31-1.(Authorized by and implementing K.S.A. 1984 Supp. 75-3206; effective, E-74-4, Nov. 1, 1979; effective May 1, 1980; amended May 1, 1985; revoked P-\_\_\_\_\_.)

(b) Each revocation must be submitted on a separate page or pages. However, revocations of consecutively numbered regulations may be filed on the same page. If the histories of consecutively numbered regulations are identical, the regulations can be revoked in one entry. If the histories are different, each regulation must be revoked separately.

The following is an example of a page of revocations:

**EXAMPLE:**

28-4-1 through 28-4-4. (Authorized by and implementing K.S.A. 1988 Supp. 65-508; effective Jan. 1, 1986; amended, E-88-14, July 14, 1988; amended May 1, 1989; revoked P-\_\_\_\_\_.)

28-4-5. (Authorized by and implementing K.S.A. 65-508; effective Jan. 1, 1986; amended May 1, 1990; amended, T-28-7-14-94, July 14, 1994; amended Sept. 1, 1994; revoked P-\_\_\_\_\_.)

28-4-6, 28-4-7. (Authorized by and implementing K.S.A. 65-508; effective Jan. 1, 1986; amended May 1, 1993; revoked P- \_\_\_\_\_.)

28-4-8 through 28-4-19. (Authorized by and implementing K.S.A. 65-508; effective Jan. 1, 1986; revoked P- \_\_\_\_\_.)

28-4-20 through 28-4-25. (Authorized by and implementing K.S.A. 65-508; effective Jan. 1, 1986; amended, T-28-4-6-93, April 6, 1993; amended July 1, 1993; revoked P-\_\_\_\_\_.)

- (c) Once a regulation is revoked, that K.A.R. number may not be reused in the future.

**CAPITALIZATION**

Regulatory style generally follows the statutory style regarding capitalization, so many proper names normally capitalized in mainstream usage are spelled with lowercase letters in regulations.

However, certain names are always capitalized:

months, days of the week	January, Tuesday
specific persons	Bill Graves
geographic places	Kansas, Topeka, United States
historic events	World War II
holidays	Thanksgiving Day
compilations of regulations or statutes	K.A.R., K.S.A., C.F.R.
acronyms	CPA, AICPA, NFPA

Please note that names of agencies, organizations, companies, and departments, and titles of documents are generally lowercase, except as noted below:

Kansas national guard  
American red cross  
American institute of certified public accountants  
social security act  
department of revenue

### **NUMBERS**

In keeping with statutory style, express in words only all isolated whole numbers from one through nine and numbers that begin a sentence. Rephrase a sentence, if possible, to avoid beginning with a number. All other numbers, dates, percentages, decimals, fractions, and monies should be expressed in figures only. Do not write the number followed by the corresponding figure in parentheses.



**EXAMPLE:**

“Within 10 days of such an incident . . . .”

“The shelter structure shall be no less than four feet high . . . .”

—OR—

“The shelter structure shall be no less than 4.5 feet high . . . .”

**REFERENCES**

(a) Within the body of a regulation, reference a particular statute by using the abbreviation “K.S.A.” before the statute number and the phrase “and amendments thereto” following the statute number. Reference specific Kansas administrative regulations by using the abbreviation “K.A.R.” before the regulation number. Note that the phrase “and amendments thereto” is NOT used in references to K.A.R.s, nor is it used in the history of a regulation.

**EXAMPLE:**

“Fire and extended coverage insurance permitted by K.A.R. 40-5-6 . . . .”

**EXAMPLE:**

“Subject to the provisions of K.S.A. 75-4403 and amendments thereto, any state employee may . . . .”

Reference an entire article within your agency’s regulations as follows: “. . . as required by article 2 of these regulations.” The phrase “these regulations” refers only to that agency’s regulations and not to the entire body of Kansas administrative regulations.

(b) “Subsection” refers to the initial subdivision of a regulation, e.g., “subsection (e) of this regulation.” Further subdivisions should be referred to as “paragraphs,” e.g., “paragraph (e)(1) of this regulation.”

(c) When revoking a regulation, any references to that regulation in other regulations must be deleted or modified. If a regulation is amended in a manner that changes the

regulation's outline form, any internal references or references to the affected subdivisions that appear in another regulation must be amended in order to maintain the accuracy of the reference.

### **ADOPTIONS BY REFERENCE**

When applicable and desirable, adopt by reference (according to Attorney General Opinion No. 77-369). Examples of material that an agency may desire to adopt by reference include standards of a national voluntary trade association or a federal regulation. Agencies may wish to consider adopting a document by reference when the material is lengthy, highly complex, or technical, or when the material cannot be readily adapted to the form, style, and organization requirements for regulations.

Use the following format for an adoption by reference: “(Title), (volume), (page), as in effect on (a specific date), is adopted by reference.”

**EXAMPLE:**

“The provisions of 49 C.F.R. Part 382, as in effect on February 15, 1994, and 49 C.F.R. Part 40, as in effect on February 15, 1994, are hereby adopted by reference.”

A copy of any material adopted by reference in a regulation must be available from the agency that adopted the material. In addition, a copy of any material adopted by reference must accompany the regulation when submitted to the secretary of administration, the attorney general, and the secretary of state. (See pages 6, 7, and 25.) This requirement applies whether or not the document was previously adopted by reference in an earlier version of the same regulation or in a different regulation. **Each document should be marked to show which regulation or regulations refer to that document.**

The adoption by reference must indicate the publication date of the document or must specify that the document is adopted as in effect on a certain date. Therefore, future revisions to the document will be adopted by reference only if the regulation is amended to reflect the new publication or revision date.

### **EFFECTIVE DATES**

The effective date of any permanent regulation is 15 days after the text of the adopted regulation is printed in the *Kansas Register*, or a later date stated in the body of the regulation. As noted previously, the *Kansas Register* is published each Thursday; therefore, permanent regulations that do not state an effective date will take effect on the third Friday following publication in the *Kansas Register*. If the third Friday is a holiday, the regulation will take effect on the first working day following the holiday. The effective date of a temporary regulation is the date the regulation is approved by the state rules and regulations board and formally filed by the secretary of state, or a later date stated in the body of the regulation. The effective date of all or specific parts of a permanent or temporary regulation may be delayed to a date later than its filing date if the delayed effective date is clearly expressed in the body of the regulation.

**EXAMPLE:** “This regulation shall take effect on and after January 1, 2002.”

### **STATEMENTS TO AVOID**

- (a) Do not preface regulations with a purpose clause.

**UNNECESSARY:** “The purpose of this rule is to protect the interest of life insurance policy holders by establishing minimum standards . . . .”

- (b) In general, do not repeat the language of the statute in the regulation. The Kansas administrative regulations are not meant to duplicate the Kansas statutes annotated. If a term is defined in the Kansas statutes annotated, do not redefine it in the K.A.R.s.

- (c) Do not insert examples or notes to clarify the regulations.

<p><b>DON'T SAY:</b> “Washing facilities, such as washrooms, basins, sinks, or showers, shall be provided for animal caretakers.”</p> <p><b>SAY:</b> “Each licensee shall provide washing facilities for the animal caretakers. Washing facilities may include washrooms, basins, sinks, or showers.”</p>
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(d) Do not include sentences that are nonregulatory. Sentences that merely provide background information or that indicate that a regulated party “should” do or “is encouraged” to do something are not regulatory.

(e) Do not include provisions that are “self-regulatory” or “self-directory,” i.e., provisions that direct your agency to do something. (See page 38.)

(f) Do not use the phrase “including, but not limited to . . . .” The word “including” conveys the concept that the list that follows is **not** exhaustive; therefore, “but not limited to” is redundant.

Agencies should be aware that the department of administration reviews the **entire regulation** each time it is adopted, and not simply those portions of a regulation that are amended.

K.S.A. 77-420 requires the secretary of administration to review each regulation and approve it based on “such requirements as to organization, style, orthography and grammar as the secretary may adopt.” One of the primary goals in establishing the style requirements in this manual, and in reviewing regulations, is to ensure that regulations are as clear and readable as possible. For this reason, a practical result of reviewing the entire regulation is the opportunity to refine regulations and address ambiguous or awkward language that may have been overlooked in prior reviews. At the same time, department of administration staff reviewing regulations recognize that the process of adopting regulations can be both time-consuming and frustrating. For this reason, when an agency expresses concerns about edits, particularly when the regulation was approved recently, the staff is willing to discuss those concerns and attempts to be sensitive to them. However, the willingness of agencies to accommodate edits to the extent that they do not alter the substance or meaning of the regulations is appreciated.

## **ATTORNEY GENERAL'S REVIEW**

(a) The attorney general reviews proposed regulations, both temporary and permanent, for “legality.” In performing this duty, the assistant attorneys general consider whether or not the proposed regulations meet all of the following criteria:

- (1) The state agency has the authority to adopt the proposed regulations.
- (2) The proposed regulations, including any documents adopted by reference, are within the parameters of the statutory provisions cited as being implemented.
- (3) The proposed regulation identifies the correct effective date and source of any document adopted by reference.
- (4) The proposed regulations do not conflict with other statutes or constitutional provisions.

(b) To comply with the rules and regulations filing act, each regulation must conclude with a history, which must include a citation of one or more statutes that authorize the state agency to adopt the particular regulation proposed and a citation of the specific statute or statutes being implemented or interpreted. A proposed regulation will not be approved if either of these citations is omitted or is incorrect. (See page 58.)

(c) Regulations will be approved by the attorney general **only after having been reviewed and approved by the secretary of administration**. However, for complex regulations or those having questionable authority, the agency may wish to consult with the attorney general’s office during the drafting stage or seek a preliminary review by the attorney general before submitting the regulation to the secretary of administration.

(d) Because of the need to review regulations in a timely manner, there may be instances in which, after a regulation is approved, subsequent in-depth research on a specific question of law reveals that the regulation is beyond the agency’s authority. While the attorney general makes every effort, within the time constraints, to avoid this occurrence, the attorney

general's approval of a regulation does not prevent issuance of a later opinion regarding legality of the regulation. An attorney general opinion concluding that an existing regulation is invalid does not void the regulation; agency action, legislation, or a court order is necessary to amend, revoke, override, or strike down a regulation.

Agencies should be aware that the attorney general's office reviews the **entire regulation** each time it is adopted, and not simply those portions of a regulation that are being amended. If the attorney general recommends changes in a regulation, the agency should provide a copy of the initial version as well as the revised version when resubmitting the regulation to the attorney general for approval. This is a timesaving measure.

## **REQUIREMENTS FOR FILING WITH THE SECRETARY OF STATE**

- (a) Under the direction of the secretary of state, identify each regulation with a distinguishing number. Do not use a decimal system of numbering. Do not use the number of a regulation that has been revoked.
- (b) Each regulation must be typewritten, mimeographed, or printed on standard letter-size paper (8 1/2 by 11 inches).
- (c) File the notice of hearing, the proposed regulations, and a copy of the economic impact statement with the secretary of state after the regulation has been approved for form and legality. While only one copy of the regulations and economic impact statement is required by statute, the secretary of state requests two copies of each of these documents. (See page 18.)
- (d) File the original and two copies of each adopted permanent regulation in the secretary of state's office. File the original and eight copies of each adopted temporary regulation in the secretary of state's office.
- (e) File each regulation, including those to be amended or revoked, on a separate sheet or sheets of paper, except in the case of consecutively numbered revocations. (See page 61.)
- (f) When amending an existing regulation, show the new language by underlining or using italics. While italics may be used, agencies are strongly encouraged to use underlining as it is much clearer. Underlining should not be used in new regulations. All deleted material must appear in the amended regulation in strike type. The authorization and implementation citations in the history section are considered part of the regulation. Each change in these citations must be noted with strike type and underlining.
- (g) Accompany every regulation filed in the secretary of state's office with the economic impact statement. The secretary of state requests that agencies provide a total of three copies of the economic impact statement for permanent regulations and nine copies for



temporary regulations. If a public hearing was held, include a statement in the revised economic impact statement specifying the time and place at which the hearing was held and the number of individuals in attendance at the hearing. If the proposed regulation is mandated by federal statute or regulation as a requirement for participating in or implementing a federally subsidized or assisted program, state in the economic impact statement that the proposed regulation is mandated by federal law. Include a statement in the economic impact statement indicating whether or not the regulation exceeds the requirements of federal law.

(h) If the regulation is adopted by a board or commission, accompany the regulation filed in the secretary of state's office with a certified copy of the roll call vote required for its adoption. If the adopting authority is an individual, that individual must file a written declaration of adoption. The secretary of state requests that agencies provide a total of three copies of the appropriate adoption document for permanent regulations and nine copies for temporary regulations.

(i) If a document is adopted by reference in a regulation, file a copy of that document with the regulation. A copy of the document should be filed each time the regulation is amended. Under certain circumstances, agencies can request an exception to this requirement. At the top of the document, mark the number of the regulation in which the document is adopted by reference. (See page 65.)

(j) If the regulation constitutes an environmental regulation, file a copy of the environmental benefit statement. If a takings assessment is required, file a copy of the assessment with the secretary of state, as well as with the governor and the attorney general, not later than the date the regulation is filed with the secretary of state.

(k) The secretary of state has limited authority to correct certain errors in a regulation before publication. The errors that may be corrected by the secretary of state are typographical in nature, including spelling and clerical errors. See K.S.A. 77-435.

(l) Once a regulation had been filed and adopted, if an agency desires to make any changes to the regulation that exceed the scope of K.S.A. 77-435, the agency must amend the regulation once again by following the series of steps outlined in this manual, beginning with submission of the amended regulation to the secretary of administration, then to the attorney general, and so on.

## **TIMELINE FOR PERMANENT RULES AND REGULATIONS**

Agencies usually have an effective date in mind for permanent regulations. The following guide will help agencies plan how much time they will need to allot to each phase of the actual filing process to meet that target date. While this timeline presents the filing process from the beginning to the target date, you will need to figure back from that date to all other steps in the process.

(a) Agencies are encouraged to begin the drafting and review process as soon as it becomes evident that regulations must be adopted. If the authorizing or implemented statutes are new, the regulations can be adopted and filed as soon as the statutes take effect i.e., as specified in the bill. Many statutes take effect when the statute is published in the *Kansas Register*.

(b) Prepare the economic impact statement and, if appropriate, an environmental benefit statement and a “takings assessment.” (See pages 7, 11, and 13.) If desired or required, consult with the league of municipalities, the Kansas association of counties, the Kansas association of school boards, or other state agencies in preparing the economic impact statement. (See page 9.)

(c) Submit the proposed regulation to the secretary of administration. Generally, allow one to three weeks for possible changes and revisions. The length of time that it takes to review regulations will vary, depending upon the length of the regulations, the type of regulation (new, amended, or revoked), the amount of time since the last amendment to the regulation, and the number of regulations that have been submitted by other agencies. Particularly lengthy, complex, or poorly drafted regulations may require more than three weeks to review, revise, and obtain approval. Generally, regulations will be reviewed in the order in which they are received.

(d) Submit the regulations to the attorney general. Allow one to three weeks for possible changes.

(e) Submit the notice of public hearing, the proposed regulations, and the economic impact statement to the secretary of state. While only one set of regulations and economic impact statements is required at this step, the secretary of state requests that agencies submit an extra set of each with the notice of hearing. If the notice of hearing is less than five pages in length, it must be submitted not later than **noon** of the **Wednesday**, eight days before publication. Generally, notices that are five pages or more in length should be submitted by 5:00 p.m. of the Monday 10 days before publication.

(f) Notice of public hearing must be given at least 60 days before the hearing date. The *Kansas Register* is published each Thursday. Therefore, the first working day that meets the 60-day notice requirement will be the Monday that occurs 61 days following publication of the notice.

(g) Hold the hearing, and keep either a sound or video recording or minutes of the proceeding. Following the hearing, allow time to make any changes to the regulations deemed advisable and time for approval of revised pages by the secretary of administration and the attorney general. One to three weeks may be required, depending upon the extent of changes. If an agency elects to make major, substantive changes that are unrelated to public comments received by the agency or that differ significantly from the original proposed amendments, the agency may wish to consider providing an additional notice and hearing.

(h) Update the economic impact statement to reflect the time and place of the hearing, the number of individuals in attendance, and any revisions to required information. If appropriate, update any environmental benefit statement or takings assessment associated with the regulation. Adopt the regulations. Agencies headed by a board or commission will need to coordinate completion of other steps in the process with scheduled meetings of the board or commission.

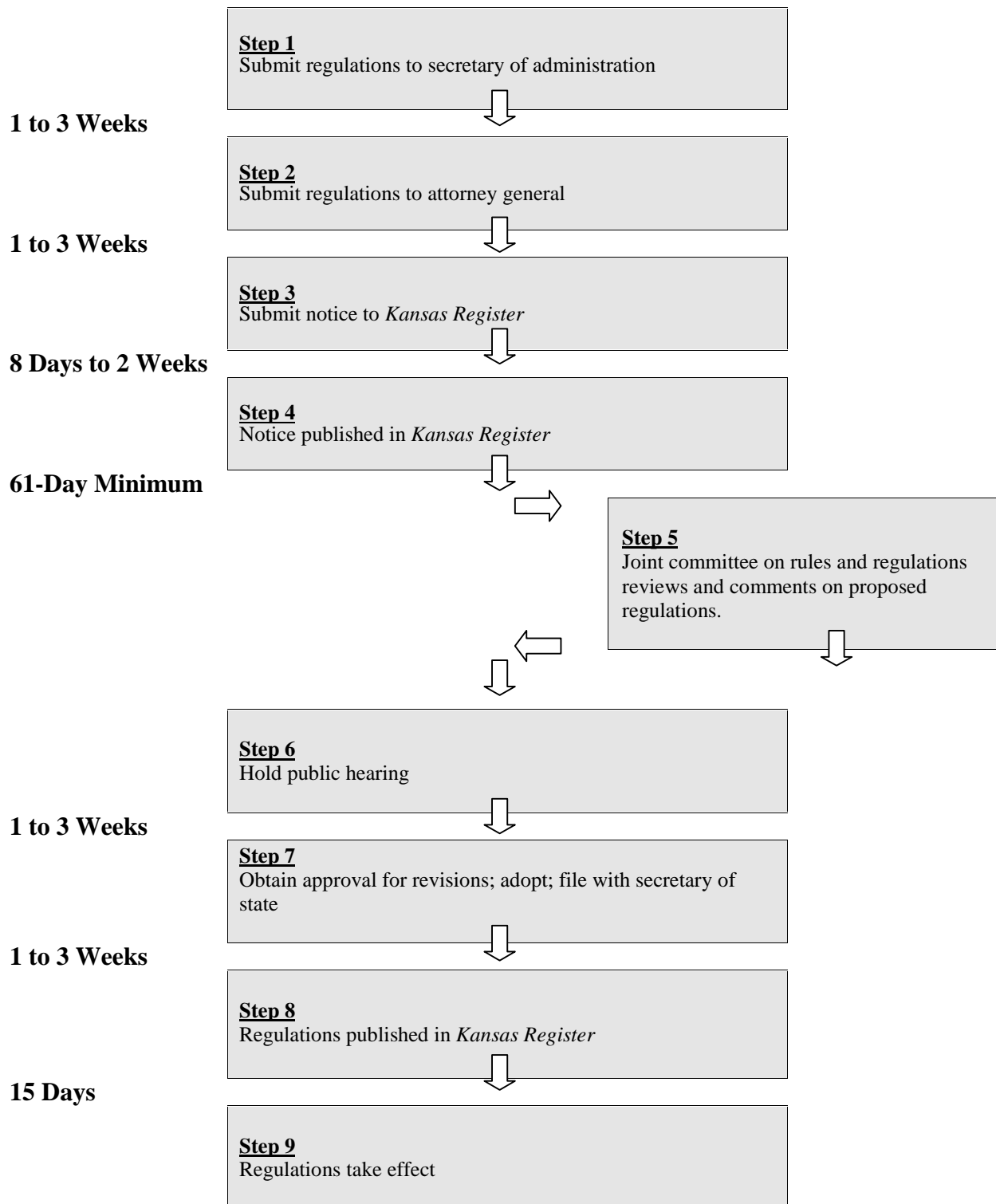
(i) File with the secretary of state three copies of each permanent regulation, the economic impact statement with updated information about the hearing, formal adoption documents, any document adopted by reference, and any environmental benefit statement associated with the regulation. The secretary of state requests that agencies provide a total of three copies of each of these items, except that only one copy of any document adopted by reference is necessary. If a takings assessment is required, file a copy of the assessment with the governor, the attorney general, and the secretary of state not later than the date the adopted regulation is filed with the secretary of state.

(j) The date of publication in the *Kansas Register* will be determined at the time the agency files the regulations with the secretary of state. Publication deadlines for the *Kansas Register* are determined by the length of the regulations and the date that the regulations are filed with the secretary of state. In general, regulations are published one to three weeks after filing.

(k) Permanent regulations will take effect 15 days after publication in the *Kansas Register*. Because the *Kansas Register* is published on Thursday of each week, permanent regulations will take effect on the third Friday following publication, unless a later date is specified in the body of the regulation. If the third Friday is a holiday, the regulation will take effect on the first working day following the holiday.

## PERMANENT REGULATIONS

**Total Time: 112 to 174 days  
16 to 25 weeks**



## **TIMELINE FOR TEMPORARY REGULATIONS**

Agencies usually have an effective date in mind for temporary regulations. The following guide will help agencies plan how much time they will need to allot to each phase of the actual filing process in order to meet that target date. While this timeline presents the filing process from the beginning to the target date, you will need to figure back from that date to all other steps in the process.

(a) Submit the proposed regulation to the secretary of administration. Generally, allow one to three weeks for possible changes and revisions. The length of time that it takes to review regulations will vary, depending upon the length and type (new, amended, or revoked) of the regulations, the amount of time since the last amendment (for amended regulations), and the number of regulations that have been submitted by other agencies for review. Particularly lengthy, complex, or poorly drafted regulations may require more than three weeks to review, revise, and obtain approval. Generally, regulations will be reviewed in the order in which they are received.

(b) Submit the regulations to the attorney general. Allow one to three weeks for possible changes.

(c) Determine whether or not a public hearing is advisable. (See page 31.) In most cases, a public hearing is not held, due to the time frame associated with the hearing. If a hearing is not held, proceed with adoption and filing of the regulations as described in subsection (f). If a hearing will be held, submit the hearing notice, the approved regulations, and a copy of the economic impact statement to the secretary of state. At the same time, send a copy of the notice of hearing to the chairperson of the joint committee on administrative rules and regulations, and the legislative research staff member assigned to the joint committee. If the notice of hearing is less than five pages in length, it must be submitted not later than **noon** on the **Wednesday**, eight days before publication. Generally, notices that are five pages or more in length should be

submitted by 5:00 p.m. of the Monday 10 days before publication. Contact the secretary of state's office for additional information on publication.

(d) Notice of public hearing must be given at least 60 days before to the hearing date. The *Kansas Register* is published each Thursday. Therefore, the first working day that meets the 60-day notice requirement will be the Monday 61 days following publication. The joint committee will schedule a review of the proposed regulations at some time during the 60-day public comment period.

(e) Following the hearing, allow time to make any changes to the regulation deemed advisable and time for approval of revised pages by the secretary of administration and attorney general. One to three weeks is advisable, depending upon the extent of the changes.

(f) Adopt the regulations. Agencies headed by a board or commission will need to coordinate completion of other steps in the process with the scheduled meetings of the board or commission.

(g) Submit to the secretary of state nine copies of each proposed temporary regulation, the revised economic impact statement with information about the hearing, if applicable, the formal adoption documents, and any document adopted by reference. The secretary of state requests that agencies provide a total of nine copies of each of these items, except that only one copy of any document adopted by reference is necessary. The deadline for being placed on the agenda of the state rules and regulations board is normally seven days before a scheduled board meeting. Consult the secretary of state for specific meeting dates.

(h) Present the regulations to the state rules and regulations board. Be prepared to explain the proposed temporary regulation in light of the statutory criterion for temporary regulations.

(i) Target effective date.



## **TEMPORARY REGULATIONS--ADOPTED WITHOUT A HEARING**

**Total Time: 3 to 10 Weeks**

**1 to 3  
Weeks**

**Step 1**

Submit regulations to secretary of administration



**1 to 3  
Weeks**

**Step 2**

Submit regulations to attorney general



**1 to 3  
Weeks**

**Step 3**

Adopt; submit to secretary of state; scheduled for state rules and regulations board

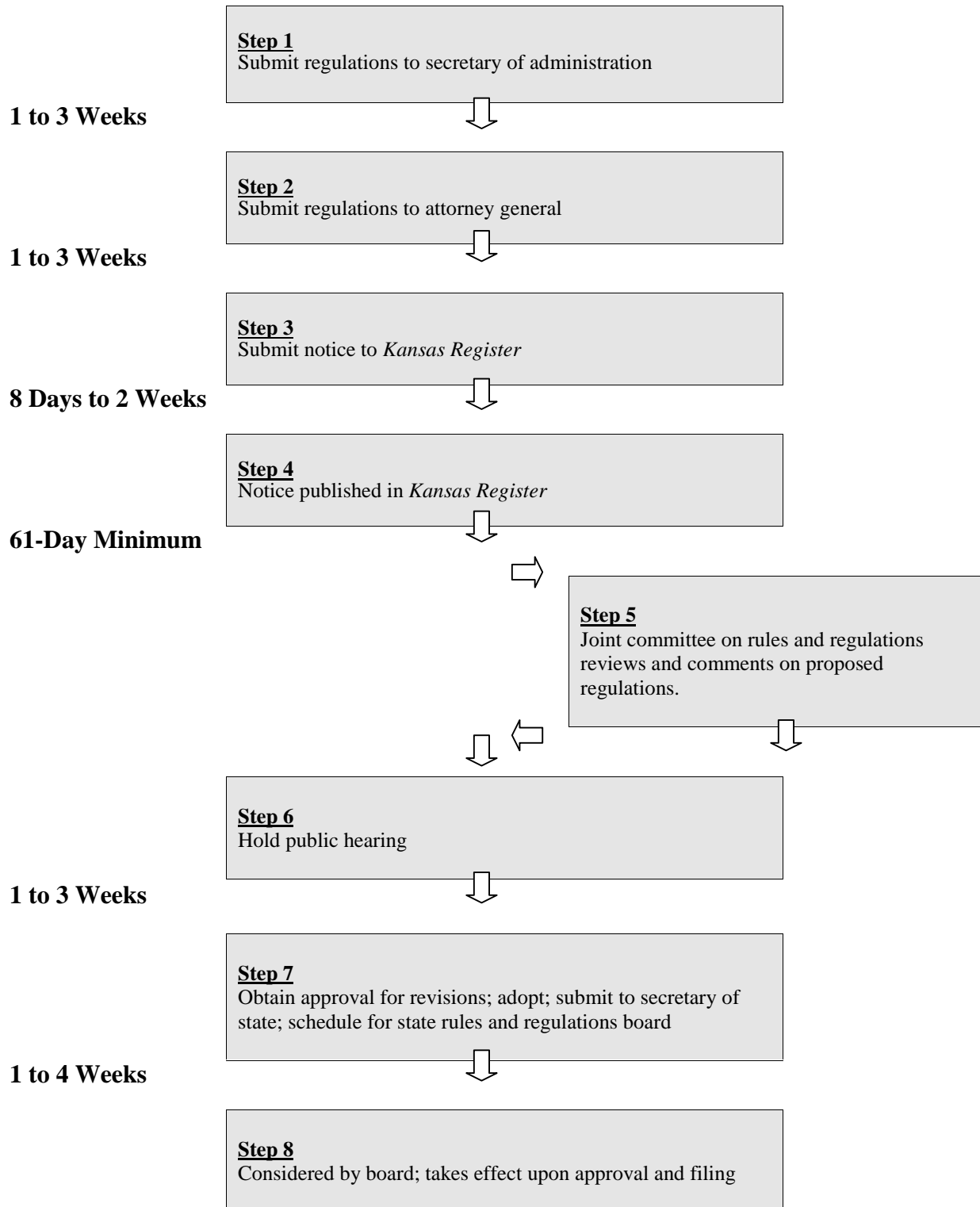


**Step 4**

Considered by board; takes effect upon approval of filing

## TEMPORARY REGULATIONS--ADOPTED WITH A HEARING

Total Time: 97 to 166 Days  
14 to 24 Weeks



**APPENDIX A**  
**(Sample Regulations)**

**Sample 1.**  
**Proposed New Regulation**

**1-2-84. Supervisor.** “Supervisor” means an individual who is assigned the following responsibilities: (a) Performs some work that is different from that of the individual's subordinates; and

(b) has the responsibility to authorize, or recommend in the interest of the employer, a majority of the following actions:

(1) Hire, transfer, suspend, promote, demote, dismiss, or discipline other employees, and address employee grievances; and

(2) assign, direct, and evaluate work.

The exercise of this authority and responsibility shall not be of a merely routine or clerical nature but shall require the use of independent judgment. (Authorized by and implementing K.S.A. 75-3747; effective P - \_\_\_\_\_.)

**Sample 2.**  
**(Proposed New Temporary Regulation Citing the Session Laws)**

**28-4-292. Safety procedures.** (a) Each facility shall develop plans for the care of juveniles during disasters, including fires, tornadoes, storms, floods, and civil disorders, as well as occurrences of serious illness or injury to staff or juveniles.

(b) The disaster plan shall be posted and followed in an emergency.

(c) Each incident resulting in the death or serious injury of any staff member of the facility or any juvenile admitted to the facility shall be reported to the director. Each incident involving any juvenile shall be reported to the parent or guardian. (Authorized by and implementing L. 2001, Ch. 116, § 20; effective, T- \_\_\_\_\_, \_\_\_\_\_.)

**Sample 3.**  
**(Temporary Amended Regulation)**

**82-2-405. Assessment of costs.** ~~The applicant shall,~~ Within 30 days after notice by the commission, each owner or operator shall pay to the commission ~~\$12.50~~ \$15.00 for each lease ~~involved~~ identified in the disposal application. This regulation shall take effect on and after July 1, 2001. (Authorized by and implementing K.S.A. 68-415; effective May 1, 1994; amended May 1, 1995; amended, T-\_\_\_\_\_, \_\_\_\_\_.)

**Sample 4.**  
**(Revocations)**

**82-5-601.** (Authorized by K.S.A. 55-134; implementing K.S.A. 1994 Supp. 55-138; effective, E-73-4, Jan. 1, 1972; effective May 1, 1973; amended May 1, 1995; revoked P-\_\_\_\_\_.)

**82-5-602 through 82-5-605.** (Authorized by K.S.A. 55-134; implementing K.S.A. 55-138; effective, E-73-4, Jan. 1, 1972; effective May 1, 1973; revoked P-\_\_\_\_\_.)

**Sample 5.**

**(Shows listing, amendments, and the history form for a permanent regulation adopted with a temporary regulation.)**

**26-5-14. Acceptable assets.** An investment company shall not invest in or own assets, or incur liabilities that are not inherent to the principal business of a licensed lender under the Kansas uniform consumer credit code, except for the following types of transactions: (a) Loan contracts, if the proceeds of the loan are used for business or agricultural purposes;

(b) installment sales contracts or leases of personal property, if used for agricultural or business purposes; or

(c) the purchase of commercial paper. ~~This restriction shall not apply to the owning of real or personal property necessary to the accommodation of that business.~~ (Authorized by

and implementing K.S.A. 16-629(b); effective, E-80-43, July 12, 1979; effective May 1, 1980; amended May 1, 1985; amended, T- \_\_\_\_\_, \_\_\_\_\_; amended P- \_\_\_\_\_.)

**Sample 6.**  
**(Shows a possible format for a fee schedule.)**

**33-3-3. Schedule of fees and charges.** The following fees shall be charged for use of park facilities: :

(a) <u>Overnight camping (per night, per unit)</u> .....	\$ 2.00
(b) <u>Overnight camping with</u> utility charge for electricity (per night, per unit) .....	<del>\$2.50</del> <u>\$3.00</u>
<del>(b)</del> (c) <u>Overnight camping with</u> utility charge for electricity, water, and sewer hookup to trailer camping units (per night, per unit) .....	<del>\$4.00</del> <u>\$5.00</u>
<del>(e)</del> (d) Annual charge for private boat docks .....	\$50.00
<del>(d)</del> (e) Towing fee for towing boat docks and other watercraft .....	\$15.00
<del>(e)</del> (f) Annual rental for private cabin sites .....	\$18.50 to \$150.00
<del>(f)</del> (g) Annual rental for club and organization cabin sites .....	\$25.00 to \$300.00

This regulation shall take effect on and after July 1, 2001. (Authorized by K.S.A. ~~1994~~ 2000  
Supp. 74-4510; implementing K.S.A. 74-4596; effective May 1, 1987; amended, T-33-6-1-94,  
June 1, 1994; amended Aug. 18, 1994; amended P-\_\_\_\_\_.)

**APPENDIX B**  
**(Sample Notice of Hearing)**

**STATE OF KANSAS**  
**DEPARTMENT OF ADMINISTRATION**  
**NOTICE OF HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS**

A public hearing will be conducted at 10:15 a.m., Thursday, November 17, 2001, in Room 106 of the Landon State Office Building, 900 Jackson, to consider the adoption of proposed changes in existing rules and regulations of the Division of Personnel Services.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the secretary of administration, Room 263-E, State Capitol, Topeka, Kansas 66612. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Faith Loretto, at (785) 296-6000 [or TTY (785) 296-4798]. Handicapped parking is located on the south end of Landon State Office Building, directly across the street from the building's north entrance, and on Ninth Street. The north entrance to the building is accessible to individuals with disabilities.

These regulations are proposed for adoption on a permanent basis. A summary of proposed regulations and their economic impact follows.

**K.A.R. 1-5-11. Salary of employee returned from military leave:** Amendments to this regulation align it with the requirements of federal reemployment rights for veterans (See 38

U.S.C. § 2021). The amendments clarify that a returning veteran must receive any salary increases the employee would have received had state service not been interrupted by military leave.

State agencies reemploying veterans under this provision could experience some increases in salary expenditures. However, the potential economic impact cannot be quantified; records regarding reemployed veterans are not maintained as a separate category. Affected employees may receive a higher salary than could be approved under existing language in this regulation.

Other governmental units, private citizens, and consumers will not be affected by this change.

**K.A.R. 1-5-15. Salary of employee upon demotion:** Changes in this regulation allow the Director of the Division of Personnel Services to approve, within stated limits, a salary that does not decrease the pay of an employee accepting a voluntary demotion.

State employees will benefit by the change in this regulation because it provides a means for employees, under stated conditions, to avoid financial loss for pursuing related career tracks. The change will also encourage more productive use of the state's workforce and for this reason will benefit state agencies. There is no significant economic impact to state agencies, employees, or the general public.

**K.A.R. 1-6-24. Transfer:** The amendment to this regulation allows a permanent employee who is on probation from a recent promotion to be eligible for transfer to a different class (assigned to the same salary range with similar duties and job qualifications).

This amendment benefits both state agencies and state employees and has no effect on other governmental units, private citizens, or consumers. There are no anticipated costs to either state agencies or employees as a result of this change.

Copies of the regulations and their economic impact statements may be obtained from the Division of Personnel Services, 9th Floor, Landon State Office Building, 900 Jackson, Topeka, Kansas 66612, (785) 296-4278.



**APPENDIX C**  
**(Sample Economic Impact Statement)**

**KANSAS STATE BOARD OF EDUCATION  
ECONOMIC IMPACT STATEMENT  
K.A.R. 91-31-24**

**I. Summary of Proposed Regulation, Including Its Purpose.**

K.A.R. 91-31-24 is a new regulation that requires each school to have two on-site visits within each four-year accreditation cycle. The purpose of these visits is to evaluate the school's progress in achieving improved student performance.

**II. Reason or Reasons the Proposed Regulation Is Required, Including Whether or Not the Regulation Is Mandated by Federal Law.**

Personal interaction, as obtained during these visits, is needed to determine the progress of each school in improving student performance and in meeting accreditation criteria. This regulation is not mandated by federal law, and, therefore, the regulation does not exceed the requirements of federal law.

**III. Anticipated Economic Impact upon the Kansas State Board of Education.**

The reports generated following each of the two on-site visits are reviewed by the State Board. Both reports are reviewed for technical assistance. In addition, the report associated with the second on-site visit, which is the accreditation visit, is reviewed for quality control and prepared for receipt by the State Board for an accreditation recommendation decision. Once the reports have been reviewed, they are stored in a computerized tracking system for future use. Costs to the State Board of Education would include the staff time spent in reviewing the reports and providing technical assistance, as well as time spent in conducting the visits when an outside chairperson is not available. This function involves all staff from the Outcomes Education Team at an estimated cost of \$30,000 to \$50,000 annually. The cost may be higher, depending upon

the number of visits conducted in each year and the time spent on technical assistance. The cost of paper and supplies is estimated to be \$800 to \$1,000 per school visit.

**IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Business or Individuals.**

The Board does not anticipate economic impact on other governmental agencies or on private businesses.

**V. Anticipated Economic Impact upon School Districts, Following Consultation with the Kansas Association of School Boards.**

Adoption of this regulation will require the district and school to prepare for each visit. The district will incur expenses that may include the costs of travel, food, and lodging for on-site team members, expenses associated with substitutes, and additional staff time. Estimated costs vary from \$5,000 to \$10,000 per visit, depending upon the time it takes to complete the visit and the number of on-site team members.

**VI. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.**

The Board considered, but rejected, the option of conducting reviews without on-site visits. However, the information needed under the accreditation system cannot be supplied by written reports only. The Kansas State Board of Education will continue to review the process and make appropriate changes.

**APPENDIX D**  
**(Sample Certificate of Adoption)**

**KANSAS STATE EMPLOYEES HEALTH CARE COMMISSION**

**CERTIFICATE OF ADOPTION**

I hereby certify that the Kansas State Employees Health Care Commission, by unanimous roll call vote, adopted K.A.R. 108-1-1 as a permanent regulation on the 31st day of August 2001. K.A.R. 108-1-1 is hereby filed for adoption, and the Economic Impact Statement is enclosed.

Roll Call Vote:

<u>Person</u>	<u>HCC Position</u>	<u>Vote</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Date

## **APPENDIX E**

### **(Review and revision of existing regulations)**

\*This material has been adapted from Options For Regulatory Improvement, distributed by the Office of the Federal Register.

Agencies should periodically review, revise, and update existing regulations. This may be done with individual regulations as they require amending or with entire sets of regulations.

(a) The following outline of common objectives in revising regulations suggests some approaches to evaluating your agency's existing regulations:

(1) Reduce complaints and known problems concerning the following aspects of the regulations:

- (A) Clarity of the regulations;
- (B) organization, including difficulties in locating specific provisions;
- (C) the amount of paperwork imposed on regulated parties;
- (D) the cost of compliance;
- (E) philosophical or substantive issues; and
- (F) conflicts, inconsistencies, and ambiguities within and between regulations;

(2) improve the relevance of the regulation to the problems it addresses and the statute it implements; improve its efficiency and effectiveness in solving the problems addressed.

Consideration should be given to factors such as the following:

- (A) Enforcement, including consistency and ease of enforcement;
- (B) the type and frequency of public complaints;
- (C) the frequency of amendments to or exemptions from the regulation. This may indicate poor initial conceptualization or a rapidly changing area that needs updating; and
- (D) the length of time since the last evaluation;

(3) improve ability to review and amend regulations, and to comply with them in one or more of the following ways:

- (A) Improving organization;
- (B) consolidating overlapping or repetitive provisions;
- (C) eliminating unnecessary or duplicative provisions;
- (D) eliminating unnecessary procedural variations; and
- (E) simplifying language.

(b) Following such an evaluation of existing regulations, the agency will be in a better position to determine the types of revision that are necessary. Revision of regulations may take many forms, including the following:

- (1) Changes in basic approach;
- (2) substantive changes, including any of the following:
  - (A) Fully rewriting content;
  - (B) adding or deleting requirements;
  - (C) resolving ambiguities;
  - (D) bringing a regulation's intent in line with accepted practice;
  - (E) reinterpreting provisions;
  - (F) redefining terms or concepts; or
  - (G) resolving policy or jurisdiction differences; and

(3) nonsubstantive changes that do not alter legal rights or obligations, including revisions resulting in simpler language and style or updating the regulation to current style conventions.

## **APPENDIX F**

### **(Guidelines for determining the content and organization of new regulations)**

(a) Define content of regulations. Regulations implement or interpret legislation; the substance of a regulation is determined by its governing statute. Therefore, a thorough understanding of the legislation's scope and intent is necessary before drafting regulations. The following questions are intended for use as informal guides in compiling material to be used in a regulation and also as tools to evaluate whether or not the proposed regulation maintains a close link to the statute.

(1) *Is the statute specific and detailed, or broad and general?* These qualities have a direct effect on the content and scope of regulations. Specific, detailed statutes require less interpretation. Little flexibility is available for case-by-case situations or rapid change. Broad and general statutes necessitate greater elaboration in the regulations but give the agency more flexibility.

(2) *What is the purpose or goal of the statute?* If regulations are to implement and interpret statutes, the writer must have a clear understanding of the following characteristics of the statute:

(A) *What are the statute's general objectives or overall goal?* These are often broad value statements such as "In the interest of public health and to prevent the spread of disease . . ."

(B) *What are the statute's operational objectives?* Operational objectives are conditions or actions that reflect achievement of the general objectives.

(C) *What are the statute's relationships among objectives?* Are they of equal weight, complementary, or prioritized? Does the proposed regulation maintain the same kind of relationship?

(3) *What is the target population?* Who is affected by the statute?

(A) There is a distinction between the immediate target population (the regulated party) and the ultimate target (the beneficiary of the regulation). In practice, these populations may be the same.

(B) When the target and ultimate populations are different, there should be a clear, logical link between the requirements imposed on the target population and the desired effect on the ultimate population. For example, a nursing home administrator may be required to have an educational background in state health and safety regulations so that a safe, sanitary environment is provided for adult care home residents.

(4) *What is the extent and nature of the authority given to the agency by the statute?*

Common authority issues are reflected in the following questions:

(A) Does the regulation assume authority for the agency in excess of that granted by statute?

(B) Is the regulation in conflict with the governing statute in any way?

(C) Does the content of the regulation extend or modify the statute?

(D) Does the regulation's content have a reasonable relationship to statutory purpose?

(E) Has the agency followed procedural statutes?

(5) *What actions must the target group perform to carry out the purposes of the statute?* What prohibitions are invoked? Are these actions technically and financially feasible?

(6) *Who are the enforcers?* Statutes are usually vague about who is to be responsible; this area probably will need to be clarified in the regulation. Agencies may consider the following factors in assigning responsibility for enforcement:

(A) What are the legal and administrative capabilities and capacities of the proposed enforcers?

(B) Will the enforcers will be passive (regulated individuals come to the enforcers), active (as in the case of inspectors), or both?

(C) What is the relationship of the proposed enforcers to those who are regulated?

(D) Do the enforcers have the appropriate resources, expertise, and training for functioning in that role?

(7) *What is the implementation process?* What are the costs? Who is to be accountable for implementation of various aspects?

While these questions may vary somewhat in their applicability to particular cases, a general consideration of each one, with particular attention to those that appear to be most pertinent, should simplify the tasks of conceptualizing, organizing, and writing regulations.

(b) Prepare an organizational framework for the set of regulations. While the organizational conventions for individual regulations were provided in an earlier section, the following suggestions relate to the overall organization of an entire set of regulations:

(1) It may be helpful to think in terms of various types of statements commonly found in administrative rules and regulations.

(A) Definitions. Most regulations include an entire regulation or a subsection of a regulation that defines common terms used in the rest of the regulations in that series. Consider placing all definitions in a single definition regulation (or within a subsection at the beginning of a regulation), generally the first regulation of the article or series. If the statute defines words or phrases used in the regulation, do not define those words or phrases in the regulations.

(B) Specifications. These statements require that some condition be met by those regulated. They are particularly common in licensing regulations.

(C) Mandates. Mandates are statements of that which must be done.

(D) Prohibitions. Prohibitions are statements of that which must not be done.

(E) Permissions. These provisions state that which may be done.

(2) Agencies may choose other possible frameworks for organizing the regulations, including the following approaches:



- (A) Classification by subject or thing being regulated;
- (B) classification by sequence of events or chronology;
- (C) classification by function;
- (D) progression from general statements to specific statements; or
- (E) progression from simple to complex statements.

To fit a particular set of regulations, the writer may need to adapt the suggested types of organizational schemes or may use one or more in combination. While there is obviously no one accepted means for organizing regulations, it is very important that they reflect an easily grasped rationale for the manner in which they appear. Regulations that are next to each other should be so for a reason; they should show a logical progression based on one or more organizational frameworks.

## **APPENDIX G**

### **RESOURCES FOR RECORDING PRINT MATERIALS**

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**ORGANIZATION:** The University of Kansas  
Audio-Reader Network

**ADDRESS:** 1120 W. 11th Street, P.O. Box 847  
Lawrence, Kansas 66044-0101

**TELEPHONE:** 1-800-772-8898 or (785) 864-4600

**COST:** \$25.00 per production hour, plus \$2.00 per cassette.

**GROUPS SERVED:** Primarily individuals with a visual impairment, but can assist organizations and businesses on a fee basis.

**TIME REQUIREMENT:** Depends on size of project and present workload. Call first to discuss project.

**COMMENTS:** Projects must be limited to a maximum of 100 pages.

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**ORGANIZATION:** Low Vision Library

**ADDRESS:** 311 E. 12th, 3rd Floor  
Kansas City, Missouri 64106

**TELEPHONE:** (816) 842-7559

**COST:** No charge (however, must supply own tapes).

**GROUPS SERVED:** Individuals, organizations, businesses, etc.

**TIME REQUIREMENT:** Depends on the project. Some projects may be completed as quickly as one week. If a textbook or manual, they will provide recordings in segments once completed.

**COMMENTS:** Will work on 4-track recorders or standard recorders. Work is completed on a "first come, first served" basis.

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## RESOURCES FOR BRAILLE MATERIALS

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ORGANIZATION: State Library

ADDRESS: Statehouse  
300 SW 10<sup>th</sup>, Room 343-N  
Topeka, Kansas 66612-1593

TELEPHONE: (785) 296-3296

COST: No charge.

GROUPS: State agencies and members of the general public needing copies of legislation.

TIME REQUIREMENT: Time permitting. Generally one week.

COMMENTS: Documents need to be sent in digital form. Call for instructions regarding the digital format in which documents should be submitted.

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ORGANIZATION: American Red Cross Braille Service  
Midway-Kansas Chapter

ADDRESS: 707 N. Main  
Wichita, Kansas 67203-3669

TELEPHONE: (316) 265-6601 Ext. 736, Tuesday only  
—OR—  
send e-mail to [veulert@aol.com](mailto:veulert@aol.com)

COST: Call to discuss.

GROUPS SERVED: Textbooks for students are a priority; however, they will accept other requests if their workload permits.

TIME REQUIREMENT: Call to discuss.

COMMENTS: Persons interested should call first to ensure that they are not backlogged with textbooks or other work.

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ORGANIZATION: Independence, Inc.

ADDRESS: 2001 Haskell Avenue  
Lawrence, Kansas 66046

TELEPHONE: (785) 841-0333

COST: \$2.50 per Braille page if it is not on an IBM-compatible disk, and \$0.25 per additional copy. \$1.50 if information is on IBM-compatible disk, and \$0.15 per additional copy.

GROUPS SERVED: Any person, business, or agency.

TIME REQUIREMENT: At least two weeks to guarantee availability. However, call to discuss.

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ORGANIZATION: Low Vision Library

ADDRESS: 311 E. 12th, 3rd Floor  
Kansas City, Missouri 64106

TELEPHONE: (816) 842-7559

COST: Call for an estimate. All projects will be charged a \$25.00 set-up fee.

GROUPS SERVED: Individuals, organization, businesses, etc.

TIME REQUIREMENT: Call to discuss the time requirement.

COMMENTS: Services are provided on a "first-come, first-served" basis.

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## **APPENDIX H**

### **Department of Administration Enhanced Regulation Services**

#### **Do you recognize yourself in any of these situations?**

- ❑ Your office is not downtown; perhaps it's not even in Topeka. Making corrections and edits is made even more challenging because of DISTANCE.
- ❑ Your STAFF barely has time to keep up with the other work in your office. Typing and retyping regulations may be putting a strain on your employees.
- ❑ You are CONFUSED about regulatory style and all of its details; it's been a while since you had to worry about strike-type and underlining or histories.
- ❑ You and your staff dislike making several TRIPS with what you thought were completely corrected copies. However, you overlooked several corrections, and your last-minute insertion is ungrammatical. You'll have to redo the regulation and make yet another trip downtown.
- ❑ You can never find an available PARKING METER, especially when the weather is bad.
- ❑ You are in a HURRY to have the regulation approved.

Our staff can make revisions or corrections to your regulations so that they are ready for approval. Our staff can also collaborate with you in developing and drafting your regulations, economic impact statements, and hearing notices.

#### **How does the editing service work?**

- ✓ Send the regulations to the Legal Section on diskette or as an e-mail attachment. The Legal Section is currently using *Word '97*. (Send documents adopted by reference in hard copy.)
- ✓ After reviewing the regulation in the normal manner, our editor will consult with you by phone about the types of changes to be made and the expected length of time.
- ✓ Our typists will key in the changes and provide a copy for your review so that you can be sure that none of the revisions inadvertently changed your meaning.
- ✓ We will deliver a fully edited, stamped copy to the Attorney General's Office.

In other words, you get a fully approved copy of your regulation with only ONE trip downtown to pick them up from the Attorney General's Office.

### **What is the cost for the editing service?**

There is an hourly fee of \$20.00, with a minimum charge of \$20.00. Before beginning, we will propose a maximum fee that we will not exceed without your prior authorization.

### **How does the drafting service work?**

- ✓ Send any drafts or directions to the Legal Section on diskette or as an e-mail attachment.
- ✓ After reviewing the materials, our staff member will visit with you regarding any questions about the drafts.
- ✓ We will provide a copy for your review so that you can be sure that the regulation and related documents are consistent with your intent.
- ✓ We will deliver a fully edited, stamped copy to the Attorney General's Office.

### **What is the cost for the drafting service?**

There is an hourly fee of \$45.00, with a minimum charge of \$30.00. Before beginning, we will propose a maximum fee that we will not exceed without your prior authorization.

### **Our Staff**

Faith Loretto, Policy and Program Analyst. Ms. Loretto has 19 years of experience in drafting and editing regulations.

Mary Greb-Hall, Research Analyst. Dr. Greb-Hall received a Ph.D. in English from the University of Kansas, has extensive experience in teaching composition, and has over four years of experience in editing regulations.

**Call the Department of Administration**

**Legal Section**

**(785) 296-6000**

**E-mail [faith.loretto@state.ks.us](mailto:faith.loretto@state.ks.us)**

**and**

**[mary.greb@state.ks.us](mailto:mary.greb@state.ks.us)**